CODE OF VIRGINIA

Title 16.1

Courts Not of Record

Title 16.1 - COURTS NOT OF RECORD

Chapter 1 - GENERAL PROVISIONS [Repealed]

§§ 16.1-1 through 16.1-35.1. Repealed.

Repealed by Acts 1972, c. 708; 1973, c. 546.

Chapter 2 - COUNTY COURTS [Repealed]

§§ 16.1-36 through 16.1-51. Repealed.

Repealed by Acts 1972, c. 708; 1973, c. 546.

Chapter 3 - MUNICIPAL COURTS [Repealed]

§§ 16.1-52 through 16.1-63. Repealed.

Repealed by Acts 1972, c. 708; 1973, c. 546.

Chapter 4 - JOINT OPERATION OF COURTS [Repealed]

§§ 16.1-64 through 16.1-69. Repealed.

Repealed by Acts 1972, c. 708; 1973, c. 546.

Chapter 4.1 - DISTRICT COURTS

Article 1 - TRANSITION PROVISIONS

§ 16.1-69.1. Repealing clause.

All acts and parts of acts, all sections of this Code, and all provisions of municipal charters, inconsistent with the provisions of this title, as amended, are, except as herein otherwise provided, repealed to the extent of such inconsistency.

1972, c. 708; 1973, c. 546.

§ 16.1-69.2. Effect of repeal of Title 16 and amendment of Title 16.1.

The repeal of Title 16 effective as of July 1, 1956, and amendment of Title 16.1 effective as of July 1, 1973, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such day, or any prosecution, suit or action pending on that day. Every such pending prosecution, suit and action shall be proceeded in, tried and determined in the same court, or in the court which succeeds to or has its jurisdiction, and any further action taken therein shall be valid and effective for all purposes, whether taken by the court in its present or former name or by the judge thereof under his present or former judicial title. All further proceedings therein shall conform, as far as practicable, to the provisions of Title 16.1, as amended.

1956, c. 555; 1972, c. 708; 1973, c. 546.

§ 16.1-69.3. Certain notices, recognizances and processes validated.

Any notice given, recognizance taken, or process or writ issued before July 1, 1973, shall be valid although given, taken or to be returned to a day after such date, or to a court established by this title or the clerk's office thereof, in like manner as if this title, as amended, had been effective before the same was given, taken or issued.

1956, c. 555; 1972, c. 708; 1973, c. 546.

§ 16.1-69.4. References to former sections, articles or chapters of Title 16 or Title 16.1 as amended.

Whenever in this title any of the conditions, requirements, provisions or contents of any section, article or chapter of Title 16, as such title existed prior to July 1, 1956, or Title 16.1, as such title existed prior to July 1, 1973, are transferred in the same or in modified form to a new section, article or chapter, and whenever such former section, article or chapter is given a new number in this title, all references to any such former section, article or chapter of Title 16 or Title 16.1 appearing elsewhere in this Code other than in this title shall be construed to apply to the new or renumbered section, article or chapter containing such conditions, requirements, provisions or contents or portions thereof.

1956, c. 555; 1972, c. 708; 1973, c. 546.

§ 16.1-69.5. Meaning of certain terms.

Unless the context should otherwise require, the terms set out in this section shall be construed as follows:

(a) "Courts not of record" shall mean all courts in the Commonwealth below the jurisdictional level of the circuit courts including general district courts and juvenile and domestic relations district courts;

(b) "General district courts" shall mean all courts not of record, except juvenile and domestic relations district courts in counties and cities heretofore designated as county and municipal courts;

(c) "Juvenile and domestic relations district courts" shall mean all courts in counties and cities heretofore designated as juvenile and domestic relations courts or regional juvenile and domestic relations courts;

(d) "District courts" shall mean general district courts and juvenile and domestic relations district courts;

(e) "County courts" and "municipal courts" shall be deemed to refer to general district courts;

(f) "Juvenile and domestic relations courts" and "regional juvenile and domestic relations courts" shall be deemed to refer to juvenile and domestic relations district courts; and

(g) "Chief judge" shall mean that judge so designated for a term to assume primary administrative responsibility for the general district courts or the juvenile and domestic relations district courts in the district served by such judge.

1972, c. 708; 1973, c. 546; 1975, c. 334.

Article 2 - DISTRICTS; DISTRICT COURTS AND JUDGES

§ 16.1-69.6. Establishment of districts.

On and after July 1, 1973, the Commonwealth shall be divided into districts encompassing all counties and cities in the Commonwealth to provide a basis for the sound and efficient administration of the courts not of record, as follows:

(1) The City of Chesapeake shall constitute the first district.

(2) The City of Virginia Beach shall constitute the second district.

(2-A) The Counties of Accomack and Northampton shall constitute district two-A.

(3) The City of Portsmouth shall constitute the third district.

(4) The City of Norfolk shall constitute the fourth district.

(5) The Cities of Franklin and Suffolk and the Counties of Isle of Wight and Southampton shall constitute the fifth district.

(6) The Cities of Emporia and Hopewell and the Counties of Prince George, Surry, Sussex, Greensville and Brunswick shall constitute the sixth district.

(7) The City of Newport News shall constitute the seventh district.

(8) The City of Hampton shall constitute the eighth district.

(9) The Cities of Williamsburg and Poquoson and the Counties of York, James City, Charles City, New Kent, Gloucester, Mathews, Middlesex, King William and King and Queen shall constitute the ninth district.

(10) The Counties of Cumberland, Buckingham, Appomattox, Prince Edward, Charlotte, Lunenburg, Mecklenburg and Halifax shall constitute the tenth district.

(11) The City of Petersburg and the Counties of Dinwiddie, Nottoway, Amelia and Powhatan shall constitute the eleventh district.

(12) The City of Colonial Heights and the County of Chesterfield shall constitute the twelfth district.

(13) The City of Richmond shall constitute the thirteenth district.

(14) The County of Henrico shall constitute the fourteenth district.

(15) The City of Fredericksburg and the Counties of King George, Stafford, Spotsylvania, Caroline, Hanover, Lancaster, Northumberland, Westmoreland, Richmond and Essex shall constitute the fifteenth district.

(16) The City of Charlottesville and the Counties of Madison, Greene, Albemarle, Fluvanna, Goochland, Louisa, Orange and Culpeper shall constitute the sixteenth district.

(17) The County of Arlington and the City of Falls Church shall constitute the seventeenth district.

(18) The City of Alexandria shall constitute the eighteenth district.

(19) The City of Fairfax and the County of Fairfax shall constitute the nineteenth district.

(20) The Counties of Loudoun, Fauquier and Rappahannock shall constitute the twentieth district.

(21) The City of Martinsville and the Counties of Patrick and Henry shall constitute the twenty-first district.

(22) The City of Danville and the Counties of Pittsylvania and Franklin shall constitute the twenty-second district.

(23) The Cities of Roanoke and Salem and the County of Roanoke shall constitute the twenty-third district.

(24) The City of Lynchburg and the Counties of Nelson, Amherst, Campbell and Bedford shall constitute the twenty-fourth district.

(25) The Cities of Covington, Lexington, Staunton, Buena Vista, and Waynesboro and the Counties of Highland, Augusta, Rockbridge, Bath, Alleghany, Botetourt and Craig shall constitute the twenty-fifth district.

(26) The Cities of Harrisonburg and Winchester and the Counties of Frederick, Clarke, Warren, Shenandoah, Page and Rockingham shall constitute the twenty-sixth district.

(27) The Cities of Galax and Radford and the Counties of Pulaski, Wythe, Carroll, Montgomery, Floyd, Giles, Bland and Grayson shall constitute the twenty-seventh district.

(28) The City of Bristol and the Counties of Smyth and Washington shall constitute the twenty-eighth district.

(29) The Counties of Tazewell, Buchanan, Russell and Dickenson shall constitute the twenty-ninth district.

(30) The City of Norton and the Counties of Wise, Scott and Lee shall constitute the thirtieth district.

(31) The Cities of Manassas and Manassas Park, and the County of Prince William shall constitute the thirty-first district.

1972, c. 708; 1973, c. 546; 1974, c. 297; 1976, c. 126; 1977, c. 5; 1983, c. 149; 1986, c. 405; 1987, c. 624; 1992, c. 744; 2006, c. 861; 2016, cc. 164, 312.

§ 16.1-69.6:1. Number of judges.

For the several judicial districts there shall be full-time general district court judges and juvenile and domestic relations district court judges, the maximum number as hereinafter set forth, who shall during their service reside within their respective districts, except as provided in § 16.1-69.16, and whose compensation and powers shall be the same as now and hereafter prescribed for general district court judges and juvenile and domestic relations district court judges.

The maximum number of judges of the districts shall be as follows:

	General District Court	Juvenile and Domestic Relations District Court

	Judges	Judges
First	4	4
Second	7	6
Two-A	2	1
Third	2	3
Fourth	6	5
Fifth	3	2
Sixth	5	3
Seventh	4	4
Eighth	3	3
Ninth	3	4
Tenth	3	3
Eleventh	3	3
Twelfth	5	6
Thirteenth	6	5
Fourteenth	5	5
Fifteenth	8	9
Sixteenth	4	6
Seventeenth	3	2
Eighteenth	2	2
Nineteenth	12	8
Twentieth	4	3
Twenty-first	2	2
Twenty-second	3	4
Twenty-third	4	5
Twenty-fourth	3	6
Twenty-fifth	4	5
Twenty-sixth	5	7
Twenty-seventh	5	5
Twenty-eighth	3	3
Twenty-ninth	2	3
Thirtieth	2	3
Thirty-first	5	5

The election or appointment of any district judge shall be subject to the provisions of § 16.1-69.9:3.

1974, c. 1; 1975, c. 41; 1976, c. 56; 1977, c. 5; 1978, c. 2; 1979, c. 7; 1980, c. 93; 1981, c. 26; 1982, c. 4; 1983, c. 1; 1985, c. 44; 1986, c. 75; 1987, c. 16; 1988, c. 22; 1989, c. 44; 1990, c. 112; 1992, c. 91; 1993, cc. 8, 31; 1994, c. 89; 1994, 1st Sp. Sess., cc. 3, 7; 1995, c. 20; 1996, c. 121; 1997, c. 16; 1998, c. 2; 1999, c. 11; 2000, c. 43; 2001, c. 16; 2004, Sp. Sess. I, c. 4; 2005, cc. 189, 228, 951; 2006, cc. 34, 488; 2006, Sp. Sess. I, c. 2; 2014, cc. 812, 822; 2016, c. 728; 2018, cc. 126, 135; 2020, cc. 343, 586; 2023, cc. 72, 73.

§ 16.1-69.7. District courts.

On and after July 1, 1973, in every county and city there shall be one court which shall be called the "_ _____ (Name of County or City) General District Court" and one court which shall be called the "_____ (Name of County or City) Juvenile and Domestic Relations District Court," and for each such court there shall be one or more judges who shall be called the judge of such general district court or juvenile and domestic relations district court as appropriate. Unless the General Assembly specifically so provides to the contrary, however, no general district court shall be established in any city in which there is no municipal court with general civil or criminal jurisdiction in operation prior to July 1, 1973, and jurisdiction previously exercised in such city by a county court shall be vested in the general district court of such county.

1972, c. 708; 1973, c. 546.

§ 16.1-69.7:1. Establishment of certain district courts.

A. On and after July 1, 1973, there shall be established in the City of Galax, one general district court and one juvenile and domestic relations district court and for each such court there shall be one or more judges who shall be appointed and serve in accordance with Chapter 4.1 (§ 16.1-69.1 et seq.) of Title 16.1. Such courts shall possess all the jurisdiction and exercise all the powers and authority in cases therein granted to district courts according to general law, within the territory which they serve.

B. Each such judge shall cause to be collected such costs and fees as allowed by law for services performed by judges, clerks, or employees of the district courts. All fines and fees collected shall be accounted for according to general law and city ordinances and paid into the treasury of the city or to the State, whichever may be entitled thereto, pursuant to § 16.1-69.48.

1976, c. 319.

§ 16.1-69.8. Existing courts continued and redesignated; exception.

The present system of courts not of record is continued as follows on and after July 1, 1973:

(a) The county court in each county shall continue as the general district court of such county with the same powers and with territorial jurisdiction over such county and over any city within the county for which a municipal court with general civil or criminal jurisdiction or separate general district court has not been established.

(b) The municipal court or courts in each city, excluding juvenile and domestic relations courts, shall continue as the general district court of the city with the same powers and territorial jurisdiction over such city; provided that in the case of more than one such municipal court in operation in any city, all

such courts shall be merged on July 1, 1973, and their powers and territorial jurisdiction merged in the general district court.

(c) The juvenile and domestic relations court of each county and city shall continue as the juvenile and domestic relations district court of the county or city with the same powers and territorial jurisdiction as heretofore provided.

(d) The municipal court of any town and/or other court of any town having general civil and criminal jurisdiction however called shall be abolished and all jurisdiction and power conferred upon any such court shall pass to and be exercised by the district courts having jurisdiction over the county wherein the town is located.

1972, c. 708; 1973, c. 546; 2018, c. 164.

§ 16.1-69.9. Judges in office continued; terms of judges; how elected or appointed.

Every judge or justice and every associate, assistant and substitute judge or justice of a court not of record in office January 1, 1973, shall continue in office as a judge or substitute judge of such court under its designation as a general district court or juvenile and domestic relations district court until the expiration of the term for which he was appointed or elected, or until a vacancy shall occur in his office or until a successor shall be appointed or elected, whichever is the latter.

Upon the expiration of such terms, or when a vacancy occurs, successors shall be elected only as authorized pursuant to §§ 16.1-69.10 and 16.1-69.14 and for the term and in the manner following:

1. With respect to terms expiring on or after July 1, 1980, successors to judges shall be elected for a term of six years by the General Assembly as provided in subdivision 2.

Any vacancy in the office of any full-time district court judge shall be filled for a full term of six years in the manner prescribed herein; provided that such vacancy shall not be filled except as provided in § 16.1-69.9:3.

2. Full-time district court judges shall be elected by the majority of the members elected to each house of the General Assembly. No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search and submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect and reports of such searches have been received by the chairmen of the House Committee for Courts of Justice and the Senate Committee on the Judiciary. If the person has not met the requirement of filing in the preceding calendar year a disclosure form prescribed in § 2.2-3117 or 30-111, he shall also provide a written statement of economic interests on the disclosure form prescribed in § 2.2-3117 to the chairmen of the House Committee for Courts of Justice and the Senate Committee on the Judiciary. The judges of the circuit court having jurisdiction over the district may nominate a panel of no more than three persons for each judgeship within the district who are deemed qualified to hold the office. The General Assembly may consider such nominations in electing a judge to fill the office but

may elect a person not on such panel to fill the office. Nominations shall be forwarded to the clerks of both houses of the General Assembly on or before December 15.

3. No person with a criminal conviction for a felony shall be appointed as a substitute judge.

If an appointment is to be made by two or more judges and there is a tie vote, then the senior judge of the circuit court having jurisdiction in the district shall make the appointment.

1972, c. 708; 1973, c. 546; 1975, c. 5; 1976, c. 374; 1977, c. 536; 1980, c. 194; 2004, c. 452; 2018, c. 578.

§ 16.1-69.9:1. Appointment, terms, etc., of substitute judges.

A. Substitute judges shall be appointed by the chief judge of the circuit court having jurisdiction within the district for a term of six years.

B. Each substitute judge shall be appointed to serve every general district court and every juvenile and domestic relations district court within the judicial district for which the appointment is made.

C. No person shall be appointed under this section until he has submitted his fingerprints to be used for the conduct of a national criminal records search and a Virginia criminal history records search, submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect, and provided a written statement of economic interests on the disclosure form prescribed in § 2.2-3117. No person with a criminal conviction for a felony shall be appointed as a substitute judge.

1973, c. 546; 1975, c. 334; 2004, c. 452; 2018, c. 578.

§ 16.1-69.9:2. Vacancies in office of judges; terms of successor judges; appointment while General Assembly not in session.

Whenever a vacancy occurs in the office of a full-time district court judge the successor shall be elected for a full term of six years and upon qualification shall enter at once upon the discharge of the duties of his office. But subject to the provisions of § 16.1-69.9:3, the judges of the circuit having jurisdiction over the district shall have the power while the General Assembly is not in session to fill pro tempore vacancies in the office of full-time district court judges. Appointment to every such vacancy shall be by commission to expire at the end of thirty days after the commencement of the next session of the General Assembly.

1973, c. 546; 1980, c. 194; 2001, c. 256.

§ 16.1-69.9:3. Investigation and certification of necessity before vacancies filled.

When a vacancy occurs in the office of any judge of any district, the vacancy shall not be filled until, after investigation, the Committee on District Courts certifies that the filling of the vacancy is necessary. The Committee shall publish notice of such certification in a publication of general circulation among attorneys licensed to practice in the Commonwealth. No notice of retirement submitted under § 51.1-305 or § 51.1-307 shall be revoked after certification of the vacancy by the Committee. If the Com-

mittee certifies that the filling of the vacancy is not necessary, it shall direct the manner of distributing the work created by the vacancy, and the vacancy shall not be filled if not certified as necessary.

1973, c. 546; 1975, c. 101; 1999, c. 319; 2004, c. 331.

§ 16.1-69.9:4. Same; election of successor judges.

Whenever a vacancy occurs or exists in the office of a full-time district judge while the General Assembly is in session, or whenever the term of a full-time judge of a district court will expire or the office will be vacated at a date certain between the adjournment of the General Assembly and the commencement of the next session of the General Assembly, a successor judge may be elected at any time during a session preceding the date of such vacancy, by the vote of a majority of the members elected to each house of the General Assembly, for a full term of six years and, upon qualification, the successor judge shall enter at once upon the discharge of the duties of his office. However, such successor judge shall not enter upon the discharge of his duties prior to the commencement of his term of office. No person shall be elected or reelected to a subsequent term under this section until he has submitted to a criminal history record search and submitted to a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect and reports of such searches have been received by the chairmen of the House Committee for Courts of Justice and the Senate Committee on the Judiciary. If the person has not met the requirement of filing in the preceding calendar year a disclosure form prescribed in § 2.2-3117 or 30-111, he shall also provide a written statement of economic interests on the disclosure form prescribed in § 2.2-3117 to the chairmen of the House Committee for Courts of Justice and the Senate Committee on the Judiciary.

1973, c. 546; 1993, c. 368; 2004, c. 452; 2018, c. 578.

§ 16.1-69.10. Number of judges.

The number of general district court judges and juvenile and domestic relations district court judges, excluding substitute judges, shall be determined as follows:

(a) Judges in office on January 1, 1973, shall be permitted to complete their terms pursuant to § 16.1-69.9;

(b) [Repealed.]

(c) On and after January 1, 1974, the number of judges authorized in each district shall be determined by the General Assembly based on the requirement that all judges whose terms commence on and after July 1, 1980, serve on a full-time basis; and

(d) On and after July 1, 1980, the number of judges authorized in each district by the General Assembly shall be based on the requirement that no district judge whose term commences on or after July 1, 1980, shall be elected to serve in more than one district or to serve both a general district court and juvenile and domestic relations district court in any district; provided, however, that a judge may serve more than one general district court or more than one juvenile and domestic relations district court in one district. The Committee on District Courts shall make a study and report to the General Assembly on or before December 1 of each year on the number of judges needed and the districts for

which they should be authorized. If the Committee recommends the creation of an additional judgeship in any district, it shall publish notice of such recommendation in a publication of general circulation among attorneys licensed to practice in the Commonwealth.

1972, c. 708; 1973, c. 546; 1980, c. 194; 1999, c. 319.

§ 16.1-69.11. Chief judges; judges; substitute judges.

Judges of the district courts shall be designated as follows:

(a) In each district there shall be one chief general district judge and one chief juvenile and domestic relations district judge who shall serve as such for a term of two years commencing July 1 of the even-numbered years. The chief district judges shall be designated by judges of the district court having jurisdiction in the district. If the designation is to be made by more than one judge and there is a tie vote, then the chief circuit judge having jurisdiction in the district shall make the designation. The incumbent chief judge shall call for an election at the conclusion of the term as chief judge and shall report the results of such election forthwith to the office of the Executive Secretary. The incumbent chief judge may succeed himself;

(b) Each judge, except substitute judges, shall be designated either general district court judge or juvenile and domestic relations district court judge depending on the court he is so designated to serve; the terms "associate judge" and "assistant judge" shall no longer be applicable and wherever such terms appear in the Code of Virginia they shall be deemed to refer to either general district court judges or juvenile and domestic relations court judges as appropriate;

(c) Substitute judges shall continue to be designated as such.

1972, c. 708; 1973, c. 546; 1975, c. 334; 1976, c. 374.

§ 16.1-69.11:1. Acting chief judge.

If the chief judge of a district court is unable to perform the duties required by law, the chief judge shall notify the other judges of such district court, or if the chief judge is unable to notify the other judges, the judge longest in continuous service who is available shall provide such notice, and the judge longest in continuous service who is available shall be the acting chief judge, and perform such duties during the chief judge's absence. If two or more judges of such district court have served for the same period, the judge most senior in years shall be the acting chief judge. Upon assuming such duties, the acting chief judge shall immediately notify the Executive Secretary of the Supreme Court and the other judges of such district court.

When the chief judge is able to resume the duties of chief judge, the chief judge shall immediately notify the Executive Secretary and the other judges of such district court, and thereupon shall resume such duties.

2010, cc. 560, 596.

§ 16.1-69.12. Limitations on practice of law by judges.

(a) A general district court judge or juvenile and domestic relations district court judge elected as a full-time judge for a term commencing on or after July 1, 1980, shall be prohibited from engaging in the practice of law.

(b) [Repealed.]

(c) Substitute judges shall not appear as counsel in any civil or criminal case arising out of the circumstances which were involved in any other case brought before them.

1972, c. 708; 1973, c. 546; 1980, c. 194.

§ 16.1-69.13. Repealed.

Repealed by Acts 2018, c. 164, cl. 2.

§ 16.1-69.14. Number of substitute judges.

The number of substitute judges shall be determined as follows:

(a) Substitute judges in office on June 30, 1975, shall be permitted to complete their terms;

(b) Subject to the expiration of such terms, the Committee on District Courts shall determine the number of substitute judges for each district which shall be necessary for the effective administration of justice. In determining the total number of substitute judges authorized for each district, the Committee shall consider, among other factors, the number of full-time and part-time judges serving the district.

1972, c. 708; 1973, c. 546; 1975, c. 334.

§ 16.1-69.15. Qualifications of judges.

On and after July 1, 1973, every full-time judge and substitute judge of a district court shall be at the time of his appointment or election a person licensed to practice law in this Commonwealth.

1972, c. 708; 1973, c. 546.

§ 16.1-69.16. Residence requirements.

A. Every judge or substitute judge of a district court shall, during his term of office, reside within the boundaries of the district in which he serves as set out in § 16.1-69.6; provided, that judges and substitute judges in office on January 1, 1977, or who are otherwise eligible may continue in office and shall be eligible for reappointment or reelection to successive terms in accordance with the provisions of § 16.1-69.10.

B. Notwithstanding any provision of law to the contrary, the residency requirement set out herein shall not apply to any judge whose residence prior to July 1, 1977, is outside the boundaries of a new district created by § 16.1-69.6, if such judge is a resident in the geographical area which encompassed the prior district. This provision shall also apply to any subsequent term for which he is elected.

C. When the boundary of a judicial district is changed to create a new judicial district, any duly elected or appointed judge of the existing judicial district may continue to serve as judge of the new judicial district if he resides therein.

1972, c. 708; 1973, c. 546; 1977, c. 25; 1991, c. 403.

§ 16.1-69.17. Oath of office of judges, clerks and others.

Every judge, substitute judge, clerk, deputy clerk, and juvenile and domestic relations probation officer of a juvenile and domestic relations district court shall, before entering upon the duties of his office, take the oath required by law. The oath of the judge and substitute judge shall be taken before a clerk of a court of record to which appeals from his court lie or any judge, and the oath of the clerk and other officers of the court shall be taken before the judge of the court he serves. Any oath taken before a judge or clerk prior to July 1, 1992, and otherwise conforming with this section is valid.

1972, c. 708; 1973, c. 546; 1992, c. 390; 1992, Sp. Sess., cc. 1, 2.

§ 16.1-69.17:1. Time within which a judge may qualify; failure to do so vacates office.

Any district court judge of this Commonwealth may qualify at any time after receiving his commission and before the expiration of thirty days after the commencement of his term of office; but if he fails to receive his commission until after the commencement of his term of office, he may qualify within thirty days from the date of receiving such commission. If a judge fails to qualify as above provided, his office shall be deemed to be vacant.

1976, c. 374.

§ 16.1-69.18. Bonds of judges, clerks, and others handling funds.

Before entering upon the performance of his duties every judge, substitute judge, clerk, deputy clerk or other officer or employee of a district court shall enter into bond before the clerk of a circuit court to which appeals from his court lie, except as hereinafter provided. The bond shall be in a penalty and with corporate surety approved by the judge of such appellate court. No such bond shall be in a penalty of less than $3,000, nor more than $75,000, and all such bonds shall be conditioned for the faithful performance of the duties of the principal. The bonds shall be made payable to the Commonwealth and shall be filed with the clerk of such appellate court. Provided, however, that instead of specific bonds being given as stipulated herein, the Committee on District Courts may in their discretion procure faithful performance of duty blanket bonds for any or all of the districts enumerated in § 16.1-69.6 covering the judges, substitute judges, clerks and other personnel of the several district courts included in such districts and within the penalty limits contained in this section, unless in the discretion of the Committee, bonds with a larger maximum penalty should be obtained. Provided further, that in those instances where specific bonds for judges, clerks, deputy clerks or other officers or employees of a district court are in effect, the Committee on District Courts may, whenever they deem it advisable, terminate such specific bonds upon obtaining a blanket bond covering such court personnel with appropriate refund or credit being made for the unearned premiums on the specific bonds being terminated. A copy of any such blanket bond so procured shall be filed with the Division of Risk Management within the Department of Treasury and with the clerk of the respective circuit courts to which appeals from the decisions of the several district courts may lie. The premiums for such bonds shall be paid by the Commonwealth.

1972, c. 708; 1973, c. 546; 1974, c. 3; 1975, c. 334; 2002, c. 406.

§ 16.1-69.19. Incompatible offices.

No person shall at the same time hold the office of judge or substitute judge of a district court and the office of magistrate, clerk of a court, sheriff, treasurer, or commissioner of the revenue, or deputy of either of them. A full-time district court judge may not serve as a commissioner of accounts, commissioner in chancery or a marriage celebrant appointed by the circuit court pursuant to § 20-25, nor shall such judge, during his continuance in office, seek or accept any nonjudicial elective office, or hold any other office of public trust or engage in any other incompatible activity. If any judge of a district court shall accept any office for which he is ineligible under this section, such acceptance shall vacate his office as judge of such court.

1972, c. 708; 1973, c. 546; 1976, c. 374; 1993, c. 312.

§ 16.1-69.20. Repealed.

Repealed by Acts 1973, c. 546.

§ 16.1-69.21. When substitute to serve; his powers and duties.

In the event of the inability of the judge to perform the duties of his office or any of them by reason of sickness, absence, vacation, interest in the proceeding or parties before the court, or otherwise, such judge or a person acting on his behalf shall promptly notify the appropriate chief district judge of such inability. If the chief district judge determines that the provisions of § 16.1-69.35 have been complied with or cannot reasonably be done within the time permitted and that no other full-time or retired judge is reasonably available to serve, the chief district judge may direct a substitute judge to serve as a judge of the court, which substitute may serve concurrently with one or more of the judges of the court or alone. When reasonably necessary, the chief district judge may designate a substitute judge from another district within the Commonwealth. The committee on district courts may adopt policies and procedures governing the utilization of substitute judges. In such event, those policies and procedures will, where applicable, control. While acting as judge, a substitute judge shall perform the same duties, exercise the same power and authority, and be subject to the same obligations as prescribed herein for the judge. A substitute judge shall retain the power to enter a final order in any case heard by such substitute judge for a period of 14 days after the date of a hearing of such case. While serving as judge of the court, the judge or the substitute judge may perform all acts with respect to the proceedings, judgments and acts of any other judge in connection with any action or proceeding then pending or theretofore disposed of in the court except as otherwise provided in this chapter in the same manner and with the same force and effect as if they were his own.

1972, c. 708; 1973, c. 546; 1983, c. 128; 1984, c. 570; 2017, c. 650; 2020, c. 118.

§ 16.1-69.22. Removal of judges and substitute judges.

Any judge or substitute judge of a district court may be removed from office in the manner and for any of the causes prescribed in Chapter 9 (§ 17.1-900 et seq.) of Title 17.1; provided, that substitute judges may be removed from office under the provisions of §§ 24.2-230 through 24.2-238.

1972, c. 708; 1973, c. 546.

§ 16.1-69.22:1. Temporary recall of retired district court judges; evaluation.

A. The Chief Justice of the Supreme Court may call upon any judge of a district court who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) and who has been found qualified within the preceding three years by the Senate Committee on the Judiciary and the House Committee for Courts of Justice to (i) hear a specific case or cases pursuant to the provisions of § 16.1-69.35 with such designation to continue in effect for the duration of the case or cases or (ii) perform, for a period not to exceed 90 days at any one time, such judicial duties in any district court as the Chief Justice of the Supreme Court shall deem in the public interest for the expeditious disposition of the business of such courts.

B. It shall be the obligation of any retired judge who is recalled to temporary service under this section and who has not attained age 70 to accept the recall and perform the duties assigned. It shall be within the discretion of any judge who has attained age 70 to accept such recall.

C. Any judge recalled to duty under this section shall have all the powers, duties, and privileges attendant on the position he is recalled to serve.

D. Notwithstanding the provisions of subsection A, the Chief Justice may call upon and authorize any judge of a district court whose retirement becomes effective during the interim period between regularly scheduled sessions of the General Assembly to sit in recall either to (i) hear a specific case or cases pursuant to the provisions of § 16.1-69.35, which designation shall continue in effect for the duration of the case or cases, or (ii) perform, for a period of time not to exceed 90 days at any one time, such judicial duties in any district court as the Chief Justice shall deem in the public interest for the expeditious disposition of the business of the courts.

E. All retired district court judges who have requested to sit in recall shall be evaluated during the final year of the three-year period following qualification by the Senate Committee on the Judiciary and the House Committee for Courts of Justice using an evaluation form prepared and distributed by the Office of the Executive Secretary of the Supreme Court of Virginia. An annual report containing the results of such evaluations conducted that year shall be prepared and transmitted to the Senate Committee on the Judiciary and the House Committee for Courts of Justice by the first day of the next regular session of the General Assembly.

1990, c. 832; 2014, c. 776; 2022, c. 532.

§ 16.1-69.23. In what cases judge disqualified.

If the judge or substitute judge of any district court:

(1) Be a party to an action;

(2) Be interested in the result of any action, otherwise than as resident or taxpayer of the city or county;

(3) Be related to any party to the action as spouse, grandparent, parent, father-in-law, mother-in-law, child, grandchild, son-in-law, daughter-in-law, brother, sister, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, first cousin, guardian or ward;

(4) Be a material witness for either party to the action;

(5) Be counsel for any party to the action;

he shall not take cognizance thereof.

1972, c. 708; 1973, c. 546.

§ 16.1-69.24. Contempt of court.

A. A judge of a district court shall have the same powers and jurisdiction as a judge of a circuit court to punish summarily for contempt, but in no case shall the fine exceed $250 and imprisonment exceed 10 days for the same contempt. From any such fine or sentence, there shall be an appeal of right within the period prescribed in this title and to the court or courts designated therein for appeals in other cases, and the proceedings on such appeal shall conform in all respects to the provisions of §§ 18.2-456 through 18.2-459.

B. Any person charged with a felony offense, misdemeanor offense, or released on a summons pursuant to § 19.2-73 or 19.2-74 who fails to appear before any court or judicial officer as required shall not be punished for contempt under this provision but may be punished for such contempt under subdivision A 6 of § 18.2-456.

1972, c. 708; 1973, c. 546; 2000, cc. 164, 185; 2019, c. 708.

§ 16.1-69.25. Judge may issue warrants, summons, and subpoenas.

Except as otherwise provided by general law, a judge of a district court may, within the scope of his general jurisdiction, issue warrants, summons, and subpoenas, including subpoenas duces tecum or other process, in civil, traffic and criminal cases, to be returned before his court, and may also issue fugitive warrants and conduct proceedings thereon in accordance with the provisions of §§ 19.2-99 through 19.2-104.

1972, c. 708; 1973, c. 546; 1994, c. 500; 2014, cc. 305, 310.

§ 16.1-69.25:1. Judge shall order bill of particulars; time for motion.

Upon request of either party, a judge of a district court may direct the filing of a written bill of particulars at any time before trial and within a period of time specified in the order so requiring. Motions for bills of particulars in criminal cases before general district courts shall be made before a plea is entered and at least seven days before the day fixed for trial.

1980, c. 338; 1998, cc. 482, 495.

§ 16.1-69.26. Judges as conservators of the peace.

The judge of each district court having criminal jurisdiction shall be a conservator of the peace within the limits of the territory in which he serves; and if such court is a city court, the judge thereof shall, except as otherwise provided by general law, also be a conservator of the peace for the area extending for one mile beyond the corporate limits of the city.

1972, c. 708; 1973, c. 546.

§ 16.1-69.27. Additional powers of judges.

A judge of a district court may take affidavits and administer oaths and affirmations in all matters and proceedings, may issue all appropriate orders or writs, including orders appointing guardians ad litem in all proper cases, in aid of the jurisdiction conferred upon him, and may certify transcripts of the records and proceedings of the court for use elsewhere. But he shall have no authority to take acknowledgments to deeds or other writings for purposes of recordation.

1972, c. 708; 1973, c. 546.

§ 16.1-69.28. Commitment of insane, etc., persons.

A judge of a district court shall have and may exercise, concurrently with special justices appointed for the purpose, the jurisdiction conferred by general law upon justices, and special justices in all matters in connection with the adjudication and commitment of incapacitated persons, including drug-addicted and inebriate persons, and the institution and conduct of proceedings thereof. Such proceedings may be had at any place within the jurisdiction of the court over which such judge presides.

1972, c. 708; 1973, c. 546; 1997, c. 801.

§ 16.1-69.29. Jurisdiction over certain waters.

Where any river, watercourse or bay lies between any counties or any cities, or any county and city in this Commonwealth, the district courts therein, on each side, respectively, shall have concurrent territorial jurisdiction over so much thereof as shall be opposite to such counties and cities. And such courts for counties or cities lying on the waters bounding the Commonwealth shall have concurrent territorial jurisdiction respectively over such waters opposite such counties and cities, as far as the jurisdiction of this Commonwealth extends. But this section shall not apply to the City of Richmond.

1972, c. 708; 1973, c. 546; 2005, cc. 45, 114.

§ 16.1-69.29:1. Certain information to be made available to certain defendants found not guilty.

In any case in which a defendant is found not guilty of any offense after a trial in a general district court at which evidence of the defendant's mental condition at the time of the alleged offense was introduced in accordance with § 19.2-271.6, the court shall make available to the defendant information provided by the community services board in accordance with § 37.2-513 regarding services provided by the community services board and how such services may be accessed.

2023, cc. 217, 218.

Article 3 - ADMINISTRATION AND SUPERVISION OF THE DISTRICT COURTS

§ 16.1-69.30. District system within unified court system.

The district court system shall be within the unified court system of the Commonwealth subordinate to the Supreme Court and subject to the administrative supervision of the Chief Justice of the Supreme Court.

1972, c. 708; 1973, c. 546.

§ 16.1-69.31. The duties of the Judicial Council.

The duties of the Judicial Council with respect to the district court system shall include those set forth in §§ 16.1-69.6 through 16.1-69.12, and such other duties as may be assigned to the Council by law.

1972, c. 708; 1973, c. 546; 2018, c. 164.

§ 16.1-69.32. Rules.

The Supreme Court may formulate rules of practice and procedure for the general district courts and juvenile and domestic relations district courts following consultation with the Chairmen of the House Committee for Courts of Justice and the Senate Committee on the Judiciary and the executive committee of the Judicial Conference of Virginia for District Courts. Such rules, subject to the strict construction of the provisions of § 8.01-3, which shall be the only rules of practice and procedure in all the district courts in the Commonwealth, shall be included in the Code of Virginia as provided in § 8.01-3, subject to revision by the General Assembly.

1972, c. 708; 1973, c. 546; 1975, c. 334; 1976, c. 306.

§ 16.1-69.32:1. Substitution of counsel.

Except in case of court-appointed counsel, no rule of court shall be made or construed so as to preclude substitution of counsel in civil and criminal cases in the district courts, nor shall any order or appearance in person, be required, to relieve original counsel of his duties in any such case. It shall be sufficient that new counsel represents to the court that the substitution is made pursuant to agreement by the parties represented and original counsel.

1980, c. 434.

§ 16.1-69.33. Committee on District Courts.

There is hereby established a Committee on District Courts to be composed of the Majority Leader of the Senate, the Speaker of the House of Delegates, the Chairman of the House Committee for Courts of Justice or his designee who shall be a member of the committee, the Chairman of the Senate Committee on the Judiciary or his designee who shall be a member of the committee, two members of the House Committee for Courts of Justice to be appointed by the chairman of the committee, and two members of the Senate Committee on the Judiciary to be appointed by the chairman of the committee, the Chief Justice of the Supreme Court of Virginia who shall be chair of the Committee, one judge of a circuit court, two general district court judges and two juvenile and domestic relations district court judges. The judicial members of the Committee on District Courts shall be made to give representation insofar as feasible to various geographic areas of the Commonwealth. The judicial members of the Committee on District Courts shall be appointed by, and serve at the pleasure of the Chief Justice.

The Committee shall meet at such times and places as it may from time to time designate for the purposes of authorizing the appointment of substitute judges pursuant to § 16.1-69.14, authorizing the establishment of clerks' offices in counties or cities as may be requisite, and establishing when such offices shall be open for business, authorizing the appointment of personnel for the district courts pursuant to Article 4 (§ 16.1-69.37 et seq.) of this chapter and establishing procedures for administrative

review of appeals from personnel actions for district court personnel and magistrates, fixing salary classification schedules of court personnel pursuant to Article 5 (§ 16.1-69.44 et seq.) of this chapter and establishing vacation and sick leave for district court judges, district court personnel and magistrates, and for such other duties or matters as are now, or may hereafter be conferred upon the Committee by law. The Committee may also adopt an official seal and authorize its use by district court clerks and deputy clerks of the district courts. Such salary classification schedules, vacation and sick leave policies shall be uniform throughout the Commonwealth.

The Committee on District Courts shall have sole authority and discretion in adjusting salary classification schedules for district court personnel. The Committee shall fix such salaries for the several district court personnel at least annually at such time as it deems it proper and as soon as practicable thereafter certify to the Comptroller and the Executive Secretary of the Supreme Court a detailed statement of the salaries fixed by them for the several district courts and the effective date of any salary adjustments.

The Committee on District Courts shall appoint (i) a Clerk's Advisory Committee composed of two clerks from the general district courts and two clerks from the juvenile and domestic relations district courts; such appointments shall be made after giving due consideration to former clerks of county and municipal courts not of record; (ii) a Magistrate's Advisory Committee composed of two magistrates; such advisory committees are to make recommendations to the Committee regarding administrative functions of the district courts.

For the performance of their duties, the Committee shall be reimbursed out of the money appropriated for the adjudication of cases in the district trial courts for their actual expenses incurred in the performance of their duties and in addition, per diem compensation allowed for members of the General Assembly for each day spent in performing such duties; provided, however, that no additional compensation shall be paid to members of the judiciary serving on the Committee.

In the event of the establishment of personal liability of a district court judge or magistrate for the loss of property or money from a district court or magistrate's office by reason of robbery or burglary, the Committee on District Courts shall have the authority, after appropriate investigation and upon its determination that the individual judge or magistrate was not negligent in the performance of his duties, to reimburse such judge or magistrate to the extent of his personal liability on a warrant of the Comptroller issued as provided by law. However, such reimbursement shall not exceed $1,000 per claim. This paragraph shall apply to all claims arising on and after July 1, 1976.

1972, c. 708; 1973, cc. 546, 547; 1974, cc. 333, 484; 1975, c. 334; 1976, cc. 52, 444; 1978, c. 133; 1984, c. 23; 1992, c. 497; 2001, c. 367; 2004, c. 330; 2008, c. 115; 2015, c. 331.

§ 16.1-69.34. Reserved.

Reserved.

§ 16.1-69.35. Administrative duties of chief district judge.

The chief judge of each district shall have the following administrative duties and authority with respect to his district:

1. When any district court judge is under any disability or for any other cause is unable to hold court and the chief judge determines that assistance is needed:

a. The chief district judge shall designate a judge within the district or a judge of another district court within the Commonwealth, if one is reasonably available, to hear and dispose of any action or actions properly coming before such district court for disposition;

b. If unable to designate a judge as provided in subdivision 1 a, the chief district judge may designate a retired district judge eligible for recall pursuant to § 16.1-69.22:1 for such hearing and disposition if such judge consents; or

c. If unable to assign a retired district court judge, the chief district judge may designate a retired circuit court judge eligible for recall pursuant to § 17.1-106 if such judge consents or the chief district judge may request that the Chief Justice of the Supreme Court designate a circuit judge if such judge consents.

If no judges are available under subdivision a, b or c, then a substitute judge shall be designated pursuant to § 16.1-69.21.

While acting, any judge so designated shall have all the authority and power of the judge of the court, and his order or judgment shall, to all intents and purposes, be the judgment of the court. A general district court judge designated pursuant to subdivision 1 a, may, with his consent, substitute for or replace a juvenile and domestic relations district court judge, and vice versa. The names of the judges designated under subdivisions b and c shall be selected from a list provided by the Executive Secretary and approved by the Chief Justice of the Supreme Court.

2. The chief general district court judge of a district may 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 for a period of not more than one year, in any of the general district courts within the district. The chief juvenile and domestic relations district court judge of a district may designate any general district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases for a period of not more than one year, in any of the juvenile and domestic relations district courts within the district. Every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as any judge of the district for which he is designated to assist, and, while so acting, his order or judgment shall be, for all purposes, the judgment of the court to which he is assigned.

3. If on account of congestion in the work of any district court or when in his opinion the administration of justice so requires, the Chief Justice of the Supreme Court may, upon his own initiative or upon written application of the chief district court judge desiring assistance, designate a judge from another district or any circuit court judge, if such circuit court judge consents, or a retired judge eligible for recall,

to provide judicial assistance to such district. Every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as any judge of the district for which he is designated to assist and while so acting his order or judgment shall be, to all intents and purposes, the judgment of the court to which he is assigned.

4. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge may establish special divisions of any general district court when the work of the court may be more efficiently handled thereby such as through the establishment of special civil, criminal or traffic divisions, and he may assign the judges of the general district court with respect to serving such special divisions. In the City of Richmond the general district court shall, in addition to any specialized divisions, maintain a separate division of such court in that part of Richmond south of the James River with concurrent jurisdiction over all matters arising in the City of Richmond.

5. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge shall determine when the district courts or divisions of such courts shall be open for the transaction of business. The chief judge or presiding judge of any district court may authorize the clerk's office to close on any date when the chief judge or presiding judge determines that operation of the clerk's office, under prevailing conditions, would constitute a threat to the health or safety of the clerk's office personnel or the general public. Closing of the clerk's office pursuant to this subsection shall have the same effect as provided in subsection B of § 1-210. In determining whether to close because of a threat to the health or safety of the general public, the chief judge or the presiding judge of the district court shall coordinate with the chief judge or presiding judge of the circuit court so that, where possible and appropriate, both the circuit and district courts take the same action. He shall determine the times each such court shall be held for the trial of civil, criminal or traffic matters and cases. He shall determine whether, in the case of district courts in counties, court shall be held at any place or places in addition to the county seat or other place expressly authorized by statute. He shall determine the office hours and arrange a vacation schedule of the judges within his district, in order to ensure the availability of a judge or judges to the public at normal times of business. A schedule of the times and places at which court is held shall be filed with the Executive Secretary of the Supreme Court and kept posted at the courthouse, and in any county also at any such other place or places where court may be held, and the clerk shall make such schedules available to the public upon request. Any matter may, in the discretion of the judge, or by direction of the chief district judge, be removed from any one of such designated places to another, or to or from the county seat or other place expressly authorized by statute, in order to serve the convenience of the parties or to expedite the administration of justice; however, any town having a population of over 15,000 as of July 1, 1972, having court facilities and a court with both general criminal and civil jurisdiction prior to July 1, 1972, shall be designated by the chief judge as a place to hold court.

6. Subject to the provisions of § 16.1-69.38, the chief judge of a general district court or the chief judge of a juvenile and domestic relations district court may establish a voluntary civil mediation program for

the alternate resolution of disputes. The costs of the program shall be paid by the local governing bodies within the district or by the parties who voluntarily participate in the program.

1972, c. 708; 1973, c. 546; 1976, cc. 307, 444; 1978, c. 200; 1984, c. 570; 1987, c. 703; 1989, c. 264; 1991, cc. 177, 392; 1992, c. 387; 1995, c. 57; 2001, c. 494; 2003, c. 102; 2005, cc. 207, 839; 2006, c. 144; 2014, c. 776; 2017, cc. 37, 225; 2019, cc. 240, 321, 526.

§ 16.1-69.35:01. Location of district courts for Albemarle County.

The Albemarle General District Court and the Albemarle Juvenile and Domestic Relations District Court may sit in the City of Charlottesville on property immediately across the street from the county courthouse.

2019, c. 240.

§ 16.1-69.35:1. Location of district courts for Carroll County.

The General District Court and the Juvenile and Domestic Relations District Court for Carroll County shall sit at the Carroll County Courthouse in Hillsville.

1974, c. 508.

§ 16.1-69.35:2. Recording of proceedings in district courts.

An audio recording of proceedings in a general district court may be made by a party or his counsel.

1985, c. 378; 2014, c. 268.

§ 16.1-69.36. Where process returnable and trials held in certain cases.

All process, civil and criminal, returnable before a district court of a county shall, if the defendants or any of them reside in a city or town in which the court is held, be made returnable at the courtroom or place the court is held in such city or town, but if none of the defendants reside therein it shall be made returnable to the county seat, or to one of the other places where the court is held, whichever shall be nearer or more accessible to such defendant or defendants. If the process is made returnable to some other place than the county seat the place to which it is returnable shall be designated therein. For all jurisdictional requirements hereunder the county seat and each and all of the places designated for the holding of the court shall be deemed to be a part of each and every magisterial district in the county.

1972, c. 708; 1973, c. 546.

Article 4 - JUDGES AND PERSONNEL OF THE DISTRICT COURTS

§ 16.1-69.37. Personnel continued in office.

The clerks, deputy clerks, referees, bailiffs and other officers and employees of county, municipal and juvenile and domestic relations courts shall continue in office in like positions with the general district courts and juvenile and domestic relations district courts until the expiration of the term, if any, for which elected or appointed. Nothing contained in this chapter shall be construed to effect or authorize any reduction in the compensation of any such officer or employee during such term.

1972, c. 708; 1973, c. 546.

§ 16.1-69.38. Authorization for substitute judges and personnel.

The Committee on District Courts established in § 16.1-69.33 shall, subject to the provision of § 16.1-69.37, establish guidelines and determine the necessity for the employment of substitute judges, clerks, deputy clerks and all other personnel of the district courts and authorize the employment of such personnel by the courts. For purposes of this chapter, the term "personnel," as related to the courts, shall not include probation officers and other social service officers of a juvenile and domestic relations district court. The Executive Secretary of the Supreme Court shall obtain pertinent personnel policies of local units of government as to personnel of courts not of record who become employees of district courts pursuant to this chapter, and he shall assist the Committee in the performance of its duties. The Committee may receive the advice and recommendations of the Executive Secretary with respect to authorization of personnel for the district courts, job classifications, salary scales, vacation and sick leave and related personnel matters.

The Committee may authorize the appointment of any personnel to serve one or more district courts within any district and in addition may authorize the clerk and deputy clerks of the circuit court of a political subdivision to serve as clerk and deputy clerks of one or more district courts within the political subdivision.

1972, c. 708; 1973, c. 546.

§ 16.1-69.39. Appointment of personnel.

All personnel shall be appointed by, serve at the pleasure of, and be subject to removal by the chief judge of the district court in which they serve. In the event of any personnel authorized to serve in both a general district court and juvenile and domestic relations district court within any district, appointments and removals shall be made by the chief judges of such courts and in the event of a tie vote on any such matter the chief judges of the district shall certify such fact to the Committee on District Courts who shall decide the matter. The provisions of this section shall not be applicable in the event of authorization for any deputy circuit court clerk or deputy clerk to serve any district court. Personnel subject to the provisions of this article shall not be subject to the Virginia Personnel Act (§ 2.2-2900 et seq.).

1972, c. 708; 1973, c. 546; 1975, c. 334.

§ 16.1-69.39:1. Legal service to district court employees and magistrates.

All legal services for personnel of the district courts or magistrates in civil matters, including civil litigation, arising out of the performance of their duties, shall be provided by the office of the Attorney General. If, in the opinion of the Attorney General, it is impractical or uneconomical for such service to be rendered by his office, the Committee on District Courts may employ special counsel for such purpose, whose compensation shall be fixed by the Committee. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the district courts.

1977, c. 94; 1980, c. 197.

§ 16.1-69.40. Powers and duties of clerks; civil liability.

The clerk and deputy clerks shall be conservators of the peace within the territory for which the court has jurisdiction, and may, within such judicial district, issue warrants, detention orders, and other processes, original, mesne and final, both civil and criminal, commit to jail or other detention facility, or admit to bail upon recognizance, persons charged with crimes or before the court on civil petition, subject to the limitations set forth by law, and issue subpoenas for witnesses, writs of fieri facias and writs of possession and eviction, attachments and garnishments and abstracts of judgments. A record made in the performance of the clerk's official duties may be authenticated as a true copy by the clerk or by a deputy clerk without additional authentication by the judge to whom the clerk reports, notwithstanding the provisions of subsection B of § 8.01-391.

No clerk or deputy clerk shall issue any warrant or process based on complaint of his spouse, child, grandchild, parent, grandparent, parent-in-law, child-in-law, brother, sister, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, first cousin, guardian or ward. They may take affidavits and administer oaths and affirmations, take and certify depositions in the same manner as a notary public, perform such other notarial acts as allowed under § 47.1-12, take acknowledgments to deeds or other writings for purposes of recordation, and issue all other legal processes which may be issued by the judge of such court and exercise such other powers and perform such other duties as are conferred or imposed upon them by law. The clerk may also issue to interested persons informational brochures authorized by a judge of such court explaining the legal rights of such persons.

No clerk or deputy clerk shall be civilly liable for providing information or assistance that is within the scope of his duties.

The clerk shall develop, implement and administer procedures necessary for the efficient operation of the clerk's office, keep the records and accounts of the court, supervise nonjudicial personnel and discharge such other duties as may be prescribed by the judge.

1972, c. 708; 1973, c. 546; 1974, c. 671; 1978, c. 463; 1983, c. 135; 1985, c. 99; 1989, c. 229; 2001, cc. 488, 499; 2019, cc. 180, 700.

§ 16.1-69.40:1. Traffic infractions within authority of traffic violations clerk; schedule of fines; prepayment of local ordinances.

A. The Supreme Court shall by rule, which may from time to time be amended, supplemented or repealed, but which shall be uniform in its application throughout the Commonwealth, designate the traffic infractions for which a pretrial waiver of appearance, plea of guilty and fine payment may be accepted. Such designated infractions shall include violations of §§ 46.2-830.1, 46.2-878.2 and 46.2-1242 or any parallel local ordinances. Notwithstanding any rule of the Supreme Court, a person charged with a traffic offense that is listed as prepayable in the Uniform Fine Schedule may prepay his fines and costs without court appearance whether or not he was involved in an accident. The prepayable fine amount for a violation of § 46.2-878.2 shall be $200 plus an amount per mile-per-hour in excess of posted speed limits, as authorized in § 46.2-878.3.

Such infractions shall not include:

1. Indictable offenses;

2. [Repealed.]

3. Operation of a motor vehicle while under the influence of intoxicating liquor or a narcotic or habit-producing drug, or permitting another person, who is under the influence of intoxicating liquor or a narcotic or habit-producing drug, to operate a motor vehicle owned by the defendant or in his custody or control;

4. Reckless driving;

5. Leaving the scene of an accident;

6. Driving while under suspension or revocation of driving privileges;

7. Driving without being licensed to drive.

8. [Repealed.]

B. An appearance may be made in person or in writing by mail to a clerk of court or in person before a magistrate, prior to any date fixed for trial in court. Any person so appearing may enter a waiver of trial and a plea of guilty and pay the fine and any civil penalties established for the offense charged, with costs. He shall, prior to the plea, waiver, and payment, be informed of his right to stand trial, that his signature to a plea of guilty will have the same force and effect as a judgment of court, and that the record of conviction will be sent to the Commissioner of the Department of Motor Vehicles.

C. The Supreme Court, upon the recommendation of the Committee on District Courts, shall establish a schedule, within the limits prescribed by law, of the amounts of fines and any civil penalties to be imposed, designating each infraction specifically. The schedule, which may from time to time be amended, supplemented or repealed, shall be uniform in its application throughout the Commonwealth. Such schedule shall not be construed or interpreted so as to limit the discretion of any trial judge trying individual cases at the time fixed for trial. The rule of the Supreme Court establishing the schedule shall be prominently posted in the place where the fines are paid. Fines and costs shall be paid in accordance with the provisions of this Code or any rules or regulations promulgated thereunder.

D. Fines imposed under local traffic infraction ordinances that do not parallel provisions of state law and fulfill the criteria set out in subsection A may be prepayable in the manner set forth in subsection B if such ordinances appear in a schedule entered by order of the local circuit courts. The chief judge of each circuit may establish a schedule of the fines, within the limits prescribed by local ordinances, to be imposed for prepayment of local ordinances designating each offense specifically. Upon the entry of such order it shall be forwarded within 10 days to the Supreme Court of Virginia by the clerk of the local circuit court. The schedule, which from time to time may be amended, supplemented or repealed, shall be uniform in its application throughout the circuit. Such schedule shall not be construed or interpreted so as to limit the discretion of any trial judge trying individual cases at the time fixed for trial. This schedule shall be prominently posted in the place where fines are paid. Fines and

costs shall be paid in accordance with the provisions of this Code or any rules or regulations promulgated thereunder.

1977, c. 585; 1978, c. 605; 1979, c. 510; 1983, c. 388; 1994, c. 912; 1998, c. 209; 2000, c. 841; 2003, c. 282; 2004, c. 350; 2011, c. 694; 2017, c. 504; 2020, cc. 1227, 1246.

§ 16.1-69.40:2. Nontraffic offenses for which prepayment authorized; schedules, fines; prepayment of local ordinances.

A. The Supreme Court shall by rule, which may from time to time be amended, supplemented or repealed, but which shall be uniform in its application throughout the Commonwealth, designate the nontraffic offenses for which a pretrial waiver of appearance, plea of guilty and fine payment may be accepted. Such offenses shall not include:

1. Indictable offenses;

2. Class 1 or Class 2 misdemeanors;

3. Offenses which involve moral turpitude;

4. Any offenses involving injury to persons;

5. Any offense punishable by incarceration or by a fine of more than $500.

B. An appearance may be made in person or in writing by mail to a clerk of court or in person before a magistrate, prior to any date fixed for trial in court. Any person so appearing may enter a waiver of trial and plea of guilty and pay the fine established for the offense charged, with costs. He shall, prior to the plea, waiver and payment, be informed of his right to stand trial and that his signature to a plea of guilty will have the same force and effect as a judgment of court.

C. The Supreme Court, upon the recommendation of the Committee on District Courts, shall establish a schedule, within the limits prescribed by law, of the amounts of fines to be imposed upon prepayment of nontraffic offenses authorized as prepayable under subsection A, designating each offense specifically. The schedule, which may from time to time be amended, supplemented or repealed, shall be uniform in its application throughout the Commonwealth. Such schedule shall not be construed or interpreted so as to limit the discretion of any trial judge trying individual cases at the time fixed for trial. The Rule of the Court establishing the schedule shall be prominently posted in the place where the fines are paid. Fines and costs shall be paid in accordance with the provisions of this Code or any rules or regulations promulgated thereunder.

D. Local ordinances fulfilling the criteria set out in subsection A may be prepayable in a like manner if such ordinances appear in a schedule entered by order of the local circuit courts. The chief judge of each circuit may establish a schedule of the fines, within the limits prescribed by local ordinances to be imposed for prepayment of local ordinances designating each offense specifically. Upon the entry of such order it shall be forwarded within 10 days to the Supreme Court of Virginia by the clerk of the local circuit court. The schedule, which may from time to time be amended, supplemented or repealed, shall be uniform in its application throughout the circuit. Such schedule shall not be construed or

interpreted so as to limit the discretion of any trial judge trying individual cases at the time fixed for trial. This schedule shall be prominently posted in the place where the fines are paid. Fines and costs shall be paid in accordance with the provisions of this Code or any rules or regulations promulgated thereunder.

1978, c. 605; 1989, c. 421; 2011, c. 694.

§ 16.1-69.40:3. Financial responsibilities of judges and clerks.

The judge of each district court shall have management responsibility over the collection and distribution of all funds received by such court; provided, however, that no judge or clerk shall incur personal liability for a shortage in such funds unless such shortage is a result of his negligence, failure to exercise appropriate supervision or intentional misconduct.

1979, c. 511.

§ 16.1-69.41. Repealed.

Repealed by Acts 1974, c. 3.

§ 16.1-69.42. Clerk when authorized by judge may execute appeal bonds; may make out and attest transcripts.

The clerk of a district court may, when authorized so to do by the judge of the court he serves, execute appeal bonds in appeals from judgment of the court. Any such clerk may make out and attest transcripts of the papers and records of the court for use in evidence elsewhere.

1972, c. 708; 1973, c. 546.

§ 16.1-69.43. Judge before whom accused was arraigned may hear case on merits; judge who has heard part of case may hear case to conclusion.

No rule shall hereafter be promulgated under the limitations of § 8.01-4 or otherwise, which would avoid or preclude the judge before whom an accused is arraigned in criminal cases from hearing all aspects of the case on its merits, or to avoid or preclude any judge in any case who has heard any part of the case on its merits, from hearing the case to its conclusion; provided, however, another judge may hear portions of a case where a judge is required to disqualify himself, in cases in which a mistrial is declared, or in cases which have been reversed on appeal, or in the event of sickness, disability or vacation of the judge. The parties to any suit, action, cause or prosecution may waive the provisions of this section. Such waiver shall be entered of record.

1973, c. 546.

Article 5 - FINANCING OF THE DISTRICT SYSTEM

§ 16.1-69.44. Salaries of judges.

Each district court judge shall be paid by the Commonwealth an annual salary which shall be fixed in the general appropriation acts and set at an amount equal to ninety percent of the annual salary fixed by state law for judges of the circuit courts.

Each substitute judge of a district court shall receive for his services a per diem compensation of $200 except when such judge sits pursuant to the provisions of Title 37.2, in which case compensation shall be limited to that provided in § 37.2-804. The judge replaced may certify that the substitute judge is entitled to $100 if the substitute judge acted in his official capacity for less than a full court docket or served less than four hours. A full-time judge elected to an initial term after January 1, 1974, shall also be prohibited from engaging in the practice of law.

1972, c. 708; 1973, c. 546; 1974, c. 612; 1976, cc. 374, 459, 667; 1979, c. 445; 1980, c. 536; 1984, c. 570; 1993, c. 327; 1999, c. 730.

§ 16.1-69.45. Salaries of clerks and personnel.

The Committee on District Courts shall fix the salaries for the clerks and personnel of the district courts. Any county or city may supplement the salaries of the clerks and other personnel of the district court wholly out of local funds. However, no supplements may be paid to full-time district court judges or substitute judges. The Commonwealth shall assume the cost of any supplement being paid to a district court employee on January 1, 1980.

1972, c. 708; 1973, c. 546; 1975, c. 334; 1976, c. 667; 1980, c. 613; 2008, cc. 349, 804; 2012, c. 62.

§ 16.1-69.46. How salaries payable.

All salaries determined according to the provisions of §§ 16.1-69.44 and 16.1-69.45 and any salary payment required by § 16.1-69.37 shall be payable by the Commonwealth, except any supplements paid to district court employees. All annual salaries shall be paid in semimonthly installments within the limits fixed by the Committee.

1972, c. 708; 1973, c. 546; 2008, cc. 349, 804; 2018, c. 164.

§ 16.1-69.47. Repealed.

Repealed by Acts 1980, c. 194.

§ 16.1-69.47:1. Travel expenses of judges and clerks; how paid.

Any judge or clerk traveling more than five miles from the courthouse in the city or county in which he resides on court business shall be entitled to reimbursement by the Commonwealth for such of his actual expenses as are necessarily and ordinarily incidental to such travel. If conveyance is by public transportation, reimbursement shall be at the actual cost thereof. If conveyance is by private transportation, reimbursement shall be at the rate established for members of the General Assembly.

1973, c. 546; 1975, c. 334; 1978, c. 404.

§ 16.1-69.48. Fees and fines.

A. All fees collected by the judge, substitute judge, clerk or employees, but not including fees belonging to officers other than the judge, clerk or employees, of a general district court or juvenile and domestic relations district court shall be paid promptly to the clerk of the circuit court who shall pay the same into the state treasury. Fees collected for services of the attorney for the Commonwealth shall be paid by the clerk of the circuit court, one-half of such fee shall be paid into the treasury of the county or

city in which the offense for which warrant issued was committed, and the other one-half of such fees shall be paid by such clerk on his monthly remittance into the state treasury.

B. Notwithstanding the provisions of subsection A, fines collected for violations of city, town or county ordinances shall be paid promptly to the clerk of the circuit court who shall tender such collected fines on a monthly basis directly to the city, town or county whose ordinance has been violated and not to the state treasury. All fines collected for violations of the laws of the Commonwealth shall be paid promptly to the clerk of the circuit court who shall pay the same into the state treasury.

C. The word "fees" as used in this section shall include all moneys from every source, exclusive of monthly bank charges, and except collections for child support or support for a spouse or parent, including by way of illustration, but not limited to, the fees collected pursuant to §§ 15.2-1627.3, 16.1-69.48:1, 18.2-268.1 through 18.2-268.12, 18.2-271.1, 19.2-163, 19.2-368.18, 29.1-551, 46.2-383, 46.2-1135, 46.2-1137 and 46.2-1138.1.

1972, c. 708; 1973, c. 546; 1976, c. 465; 1977, c. 385; 1978, c. 611; 2006, c. 305; 2016, c. 244.

§ 16.1-69.48:1. Fixed fee for misdemeanors, traffic infractions and other violations in district court; additional fees to be added.

A. Assessment of the fees provided for in this section shall be based on (i) an appearance for court hearing in which there has been a finding of guilty; (ii) a written appearance with waiver of court hearing and entry of guilty plea; (iii) for a defendant failing to appear, a trial in his or her absence resulting in a finding of guilty; (iv) an appearance for court hearing in which the court requires that the defendant successfully complete traffic school, a mature driver motor vehicle crash prevention course, or a driver improvement clinic, in lieu of a finding of guilty; (v) a deferral of proceedings pursuant to § 4.1-305, 4.1-1120, 16.1-278.8, 16.1-278.9, 18.2-57.3, 18.2-251, 19.2-298.02, 19.2-303.2, or 19.2-303.6; or (vi) proof of compliance with law under §§ 46.2-104, 46.2-324, 46.2-613, 46.2-646, 46.2-711, 46.2-715, 46.2-716, 46.2-752, 46.2-1000, 46.2-1003, 46.2-1052, 46.2-1053, and 46.2-1158.02.

In addition to any other fee prescribed by this section, a fee of $35 shall be taxed as costs whenever a defendant fails to appear, unless, after a hearing requested by such person, good cause is shown for such failure to appear. No defendant with multiple charges arising from a single incident shall be taxed the applicable fixed fee provided in subsection B, C, or D more than once for a single appearance or trial in absence related to that incident. However, when a defendant who has multiple charges arising from the same incident and who has been assessed a fixed fee for one of those charges is later convicted of another charge that arises from that same incident and that has a higher fixed fee, he shall be assessed the difference between the fixed fee earlier assessed and the higher fixed fee.

A defendant with charges which arise from separate incidents shall be taxed a fee for each incident even if the charges from the multiple incidents are disposed of in a single appearance or trial in absence.

In addition to the fixed fees assessed pursuant to this section, in the appropriate cases, the clerk shall also assess any costs otherwise specifically provided by statute.

B. In misdemeanors tried in district court, except for those proceedings provided for in subsection C, there shall be assessed as court costs a fixed fee of $61. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund)(.573770);

2. Virginia Crime Victim-Witness Fund (.049180);

3. Regional Criminal Justice Training Academies Fund (.016393);

4. Courthouse Construction/Maintenance Fund (.032787);

5. Criminal Injuries Compensation Fund (.098361);

6. Intensified Drug Enforcement Jurisdiction Fund (.065574);

7. Sentencing/supervision fee (General Fund)(.131148); and

8. Virginia Sexual and Domestic Violence Victim Fund (.032787).

C. In criminal actions and proceedings in district court for a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, there shall be assessed as court costs a fixed fee of $136. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund)(.257353);

2. Virginia Crime Victim-Witness Fund (.022059);

3. Regional Criminal Justice Training Academies Fund (.007353);

4. Courthouse Construction/Maintenance Fund (.014706);

5. Criminal Injuries Compensation Fund (.044118);

6. Intensified Drug Enforcement Jurisdiction Fund (.029412);

7. Drug Offender Assessment and Treatment Fund (.551471);

8. Forensic laboratory fee and sentencing/supervision fee (General Fund)(.058824); and

9. Virginia Sexual and Domestic Violence Victim Fund (.014706).

D. In traffic infractions tried in district court, there shall be assessed as court costs a fixed fee of $51. The amount collected, in whole or in part, for the fixed fee shall be apportioned, as provided by law, to the following funds in the fractional amounts designated:

1. Processing fee (General Fund)(.764706);

2. Virginia Crime Victim-Witness Fund (.058824);

3. Regional Criminal Justice Training Academies Fund (.019608);

4. Courthouse Construction/Maintenance Fund (.039216);

5. Intensified Drug Enforcement Jurisdiction Fund (.078431); and

6. Virginia Sexual and Domestic Violence Victim Fund (.039216).

Code 1950, § 14-132; 1956, c. 556; 1956, Ex. Sess., c. 10; 1958, c. 286; 1960, cc. 278, 368; 1962, c. 546; 1964, c. 386, § 14.1-123; 1968, c. 639; 1970, c. 553; 1975, c. 591; 1977, c. 585; 1978, c. 605; 1979, cc. 525, 594; 1982, cc. 494, 569; 1983, c. 499; 1989, c. 595; 1990, c. 971; 1992, cc. 555, 558; 1995, c. 371; 1996, cc. 62, 976; 1997, c. 215; 1998, c. 872; 2003, cc. 883, 1039; 2004, cc. 371, 375, 1004; 2005, c. 631; 2006, c. 288; 2009, c. 756; 2010, c. 874; 2011, cc. 283, 890; 2014, c. 282; 2017, c. 670; 2019, cc. 14, 57; 2020, c. 1004; 2020, Sp. Sess. I, c. 21; 2021, Sp. Sess. I, cc. 550, 551.

§ 16.1-69.48:1.01. Additional fee assessed for conviction of certain offenses.

Beginning May 1, 2003, the clerk shall assess a person, in addition to the fees provided for by § 16.1-69.48:1, a fee of $100 upon conviction of any and each charge of a violation of §§ 18.2-36.1, 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-268.3, 46.2-341.24 or § 46.2-341.26:3, or any similar local ordinance.

2003, c. 1042, cl. 9.

§ 16.1-69.48:1.02. Additional fee assessed for conviction requiring computer analysis.

In addition to the fees provided for by § 16.1-69.48:1, upon a finding of guilty of any charge or charges in which any computer forensic analysis revealed evidence used at trial of a defendant, the defendant may be assessed costs in an amount equal to the actual cost of the computer forensic analysis not to exceed $100 for each computer analyzed by any state or local law-enforcement agency. Upon motion and submission to the court of an affidavit by the law-enforcement agency setting forth the number of computers analyzed and the total amount of costs requested, the court shall determine the appropriate amount to be assessed and order such amount paid to the law-enforcement agency.

2011, c. 511.

§ 16.1-69.48:2. Fees for services of district court judges and clerks and magistrates in civil cases.

Fees in civil cases for services performed by the judges or clerks of general district courts or magistrates in the event any such services are performed by magistrates in civil cases shall be as provided in this section, and, unless otherwise provided, shall be included in the taxed costs and shall not be refundable, except in case of error or as herein provided.

For all court and magistrate services in each distress, detinue, interrogatory summons, unlawful detainer, civil warrant, notice of motion, garnishment, attachment issued, or other civil proceeding, the fee shall be $36. No such fee shall be collected (i) in any tax case instituted by any county, city or town or (ii) in any case instituted by a school board for collection of overdue book rental fees. Of the fees collected under this section, $10 of each such fee collected shall be apportioned to the Courts Technology Fund established under § 17.1-132.

The judge or clerk shall collect the foregoing fee at the time of issuing process. Any magistrate or other issuing officer shall collect the foregoing fee at the time of issuing process, and shall remit the entire fee promptly to the court to which such process is returnable, or to its clerk. When no service of

process is had on a defendant named in any civil process other than a notice of motion for judgment, such process may be reissued once by the court or clerk at the court's direction by changing the return day of such process, for which service by the court or clerk there shall be no charge; however, reissuance of such process shall be within three months after the original return day.

The clerk of any district court may charge a fee for making a copy of any paper of record to go out of his office which is not otherwise specifically provided for. The amount of this fee shall be set in the discretion of the clerk but shall not exceed $1 for the first two pages and $.50 for each page thereafter.

The fees prescribed in this section shall be the only fees charged in civil cases for services performed by such judges and clerks, and when the services referred to herein are performed by magistrates such fees shall be the only fees charged by such magistrates for the prescribed services.

Code 1950, § 14-133; 1954, c. 287; 1956, c. 556; 1958, c. 555; 1960, cc. 17, 106; 1964, c. 386, § 14.1-125; 1970, c. 569; 1971, Ex. Sess., cc. 155, 253; 1973, c. 545; 1975, c. 591; 1982, c. 569; 1983, c. 499; 1984, cc. 293, 702; 1990, c. 943; 1991, c. 577; 1992, c. 555; 1997, c. 42; 1998, c. 872; 2003, c. 1039; 2006, cc. 623, 718; 2010, c. 874; 2011, c. 890; 2020, c. 1289; 2020, Sp. Sess. I, c. 56; 2022, Sp. Sess. I, c. 1.

§ 16.1-69.48:3. Fees charged to drug offenders.

Whenever in a general district court the costs provided for in subsection C of § 16.1-69.48:1 are assessed for a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, a portion of the costs, as specified in subsection C of § 16.1-69.48:1, shall be included in the taxed costs and paid into the Drug Offender Assessment and Treatment Fund.

1995, c. 463, § 14.1-134.1; 1998, cc. 783, 840, 872; 2002, c. 831; 2004, c. 1004.

§ 16.1-69.48:4. Costs generally.

The provisions of Chapter 6 (§ 17.1-600 et seq.) of Title 17.1 shall apply, mutatis mutandis, to the laws of costs in the district courts.

1998, c. 872.

§ 16.1-69.48:5. Fees for services of juvenile and domestic relations district court judges and clerks in certain civil cases.

Except as otherwise provided, upon the initial commencement of any case in the juvenile and domestic relations district court pursuant to subdivision A 3 of § 16.1-241 when the custody or visitation of a child is a subject of controversy or requires determination, there shall be a filing fee of $25. However, only one $25 fee shall be required for all custody and visitation petitions simultaneously initiated by a single petitioner. Notwithstanding any other provision of law, there shall be no other fees or costs added to this fee as a condition of filing. No case to which this fee is applicable shall be set for hearing by the clerk until this fee has been paid except on account of poverty as provided in § 17.1-606. Fees shall be paid to the clerk in the jurisdiction in which the petition is filed.

This fee shall not be charged in any case brought by an agent of the Commonwealth or of a local government entity.

When service of process is had on the respondent named in a petition for which the filing fee established by this section has been paid, such petition may be reissued once by changing the return day of such process, for which service there shall be no charge; however, reissuance of such process shall be within three months after the original return day.

In the case of an appeal filed pursuant to § 16.1-296, the clerk shall collect any applicable fees for service of process of the notice of appeal in the circuit court from the appellant prior to transmitting the case to the clerk of the circuit court. For purposes of this section, service of process in the circuit court may include service on the appellee by the sheriff or private process server or certified or registered mail, and service on the attorney for the appellee by regular mail.

2003, c. 906; 2004, cc. 366, 659, 727.

§ 16.1-69.48:6. Fees for offenses related to sex trafficking.

The court shall order any person convicted of a misdemeanor violation of § 18.2-346.01 or of § 18.2-348 or 18.2-349 to pay a $100 fee, which shall be deposited into the Virginia Prevention of Sex Trafficking Fund to be used in accordance with § 9.1-116.4.

2019, c. 728; 2021, Sp. Sess. I, c. 188.

§ 16.1-69.49. Repealed.

Repealed by Acts 1978, c. 611.

§ 16.1-69.50. Quarters for court and clerk.

Each county and city having a general district court or juvenile and domestic relations district court shall provide suitable quarters for such court and its clerk and social services staff and a suitable room or rooms for the sessions of the court at the places designated for such purpose, except that if the court of a county is held in a city or town, other than the county seat, such city or town shall provide a suitable place for the court to be held. Such county or city shall also provide all necessary furniture, filing cabinets and other equipment necessary for the efficient operation of the court.

1972, c. 708; 1973, c. 546.

§ 16.1-69.51. Books, supplies, etc.; how furnished; Committee to determine form of records.

The Commonwealth shall provide dockets and other books, stationery and supplies necessary for the efficient operation of all district courts. Notwithstanding any other provision of law, the Committee on District Courts, after consultation with the Executive Secretary of the Supreme Court, may determine the form and character of the records of the district courts and magistrates. All dockets shall be uniform, and the form thereof shall also be subject to approval by the Auditor of Public Accounts.

1972, c. 708; 1973, c. 546; 1975, c. 334; 1985, c. 133.

§ 16.1-69.51:1. Display of flags in courtrooms.

There shall be displayed inside each courtroom of all district courts in the cities and counties of the Commonwealth the flag of the United States of America and the flag of the Commonwealth of Virginia. The governing bodies of the respective counties and cities shall make provision for such display and may accept gifts or flags for such purpose.

1976, c. 445.

§ 16.1-69.52. Repealed.

Repealed by Acts 1983, c. 499.

Article 6 - RETENTION AND DISPOSITION OF DISTRICT COURT RECORDS

§ 16.1-69.53. Definitions; construction of references to period of years.

As used in this article, the following terms shall have the following meanings:

"Court records" shall include case records, financial records and administrative records as defined in this section.

"Case records" shall mean all documents, dockets and indices.

"Documents" shall mean all motions for judgment, bills of complaint, answers, bills of particulars, other pleadings, interrogatories, motions in writing, warrants, summonses, petitions, proof of service, witness summonses and subpoenas, documents received in evidence, transcripts, orders, judgments, writs, and any other similar case-related records and papers in the possession of the district courts and filed with the pleadings in the case.

"Financial records" shall mean all papers and records related to the receipt and disbursement of money by the district court.

"Administrative records" shall mean all other court papers and records not otherwise defined.

Whenever a reference to a period of years for the retention of documents is made in this section, it shall be construed to commence on January 2 of the first year following (i) the final adjudication of a civil case or (ii) the final disposition in all other cases, unless otherwise specified herein. In foster care cases, the final disposition date is the date of transfer of custody to a local board of social services or a child welfare agency.

1983, c. 499; 2002, c. 747.

§ 16.1-69.54. General provisions.

A. Each district court shall retain and store its court records as provided in this article. The Committee on District Courts, after consultation with the Executive Secretary of the Supreme Court of Virginia, shall determine the methods of processing, retention, reproduction and disposal of records and information in district courts, including records required to be retained in district courts by statute.

B. Whenever a court record has been reproduced for the purpose of record retention under this article, such original may be disposed of upon completion of the Commonwealth's audit of the court records unless approval is given by the Auditor of Public Accounts for earlier disposition. In the event of such

reproduction, the reproduction of the court record shall be retained in accordance with the retention periods specified in this section. The reproduction shall have the same force and effect as the original court record and shall be given the same faith and credit to which the original itself would have been entitled in any judicial or administrative proceeding.

C. Electronic case papers, whether originating in electronic form or converted to electronic form, shall constitute the official record of the case. Such electronic case papers shall also fulfill any statutory requirement that requires an original, original paper, paper, record, document, facsimile, memorandum, exhibit, certification, or transcript if such electronic case papers are in an electronic form approved by the Executive Secretary of the Supreme Court. When case papers are transmitted between the district and circuit courts and there is an agreement between the chief judge of the applicable district court and the clerk of the circuit court for the electronic transmission of case papers, the case papers shall be transmitted between the courts by an electronic method approved by the Executive Secretary of the Supreme Court, with the exception of any exhibit that cannot be electronically transmitted. The clerk in the appellate court may also request that any paper trial records be forwarded to such clerk.

1983, c. 499; 2018, cc. 32, 134.

§ 16.1-69.54:1. Request for district court records.

A. For the purposes of this section, "confidential court records," "court records," and "nonconfidential court records" shall have the same meaning as set forth in § 17.1-292.

B. Requests for copies of nonconfidential court records maintained in individual case files shall be made to the clerk of a district court.

C. Requests for reports of aggregated, nonconfidential case data fields that are viewable through the online case information systems maintained by the Executive Secretary of the Supreme Court shall be made to the Office of the Executive Secretary. Such reports of aggregated case data shall not include the name, date of birth, or social security number of any party and shall not include images of the individual records in the respective case files. However, nothing in this section shall be construed to permit any reports or aggregated case data to be sold or posted on any other website or in any way redistributed to any third party. The Executive Secretary, in his discretion, may deny such request to ensure compliance with these provisions. However, such data may be included in products or services provided to a third party, provided that such data is not made available to the general public.

D. Any clerk or the Executive Secretary, as applicable, may require that the request be in writing and that the requester provide his name and legal address. A request for nonconfidential court records or reports of aggregated nonconfidential case data shall identify the requested records with reasonable specificity. Any clerk or the Executive Secretary, as applicable, may determine the costs to provide the requested records to the requester, advise the requester of such costs, and, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination, which shall be credited to the final cost of supplying the requested

records. No clerk, nor the Executive Secretary, shall be required to create a new record if the record does not already exist or provide a report of aggregated, nonconfidential case data in a format not regularly used by the clerk or the Executive Secretary; however, a clerk or the Executive Secretary, as applicable, may abstract or summarize information under such terms and conditions as agreed to by the requester and the clerk or Executive Secretary, as provided herein.

E. Except where the nature or size of the request would interfere with the business of the court or with its use by the general public, or as otherwise provided by law, the requested court records or reports of aggregated, nonconfidential case data shall be provided to the requester within a reasonable period of time, given the nature of the request and the availability of staff to respond to the request, but in no event longer than 30 days from the date of a complete request made by a requester that is fully compliant with the requirements of this section and other applicable law. Any objection or assertion of confidentiality shall be provided to the requester within a reasonable period of time, but in no event longer than 30 days from the date of a complete request made by a requester.

F. Any clerk, or the Executive Secretary, may require payment in advance of all reasonable costs, not to exceed the actual cost incurred in accessing, duplicating, reviewing, supplying, or searching for the requested court records or reports of aggregated, nonconfidential case data, including removing any confidential information contained in the court records from the nonconfidential court records being provided, excluding any extraneous, intermediary, or surplus fees or expenses to recoup the general overhead costs associated with creating or maintaining records or transacting the general business of the clerk or the Office of the Executive Secretary. Before processing a request for court records or reports of aggregated, nonconfidential case data, any clerk or the Executive Secretary may require the requester to pay any amounts owed to the clerk or the Office of the Executive Secretary for previous requests for court records or reports of aggregated, nonconfidential case data that remain unpaid 30 days or more after billing.

G. Any clerk and the Executive Secretary shall be immune from any suit arising from the production of court records or reports of aggregated nonconfidential case data in accordance with this section absent gross negligence or willful misconduct.

2018, cc. 127, 584.

§ 16.1-69.55. Retention of case records; limitations on enforcement of judgments; extensions.
A. Criminal and traffic infraction proceedings:

1. In misdemeanor and traffic infraction cases, except misdemeanor cases under § 16.1-253.2, 18.2-57.2, or 18.2-60.4, all documents shall be retained for 10 years, including cases sealed in expungement proceedings under § 19.2-392.2. In misdemeanor cases under § 16.1-253.2, 18.2-57.2, or 18.2-60.4, all documents shall be retained for 20 years. In misdemeanor cases under §§ 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-346.01, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, all documents shall be retained for 50 years. Docu-

ments in misdemeanor and traffic infraction cases for which an appeal has been made shall be returned to and filed with the clerk of the appropriate circuit court pursuant to § 16.1-135;

2. In felony cases that are certified to the grand jury, all documents shall be certified to the clerk of the appropriate circuit court pursuant to §§ 19.2-186 and 19.2-190. All other felony case documents shall be handled as provided in subdivision 1;

3. Dockets and indices shall be retained for 10 years.

B. Civil proceedings:

1. All documents in civil proceedings in district court that are dismissed, including dismissal under § 8.01-335, shall be retained until completion of the Commonwealth's audit of the court records. Notwithstanding § 8.01-275.1, the clerks of the district courts may destroy documents in civil proceedings in which no service of process is had 24 months after the last return date;

2. In civil actions that result in a judgment, all documents in the possession of the general district court shall be retained for 10 years and, unless sooner satisfied, the judgment shall remain in force for a period of 10 years;

3. In civil cases that are appealed to the circuit court pursuant to § 16.1-112, all documents pertaining thereto shall be transferred to the circuit court in accordance with those sections;

4. The limitations on enforcement of general district court judgments provided in § 16.1-94.1 shall not apply if the plaintiff, prior to the expiration of that period for enforcement, pays the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and dockets the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. However, a judgment debtor wishing to discharge a judgment pursuant to the provisions of § 8.01-456, when the judgment creditor cannot be located, may, prior to the expiration of that period for enforcement, pay the circuit court docketing and indexing fees on judgments from other courts together with any other required filing fees and docket the judgment in the circuit court having jurisdiction in the same geographic area as the general district court. After the expiration of the period provided in § 16.1-94.1, executions on such docketed civil judgments may issue from the general district court wherein the judgment was obtained upon the filing in the general district court of an abstract from the circuit court. In all other respects, the docketing of a general district court judgment in a circuit court confers upon such judgment the same status as if the judgment were a circuit court judgment;

5. Dockets for civil cases shall be retained for 10 years;

6. Indices in civil cases shall be retained for 10 years.

C. Juvenile and domestic relations district court proceedings:

1. In adult criminal cases, all records shall be retained as provided in subdivision A 1;

2. In juvenile cases, all documents and indices shall be governed by the provisions of § 16.1-306;

3. In all cases involving support arising under Title 16.1, 20, or 63.2, all documents and indices shall be retained until the last juvenile involved, if any, has reached 19 years of age and 10 years have elapsed from either dismissal or termination of the case by court order or by operation of law. Financial records in connection with such cases shall be subject to the provisions of § 16.1-69.56;

4. In all cases involving sexually violent offenses, as defined in § 37.2-900, and in all misdemeanor cases under §§ 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-346.01, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, all documents shall be retained for 50 years;

5. In cases transferred to circuit court for trial as an adult or appealed to circuit court, all documents pertaining thereto shall be transferred to circuit court;

6. All dockets in juvenile cases shall be governed by the provisions of subsection F of § 16.1-306.

D. At the direction of the chief judge of a district court, the clerk of that court may cause any or all papers or documents pertaining to civil and criminal cases that have been ended to be destroyed if such records, papers, or documents will no longer have administrative, fiscal, historical, or legal value to warrant continued retention, provided such records, papers, or documents have been microfilmed or converted to an electronic format. Such microfilm and microphotographic processes and equipment shall meet state archival microfilm standards pursuant to § 42.1-82, or such electronic format shall follow state electronic records guidelines, and such records, papers, or documents so converted shall be placed in conveniently accessible files and provisions made for examining and using the same. The provisions of this subsection shall not apply to the documents for misdemeanor cases under §§ 16.1-253.2, 18.2-57.2, 18.2-60.4, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-346, 18.2-346.01, 18.2-347, 18.2-348, 18.2-349, 18.2-370, 18.2-370.01, 18.2-374, 18.2-386.1, 18.2-387, and 18.2-387.1, which shall be retained as provided in subsection A.

1983, c. 499; 1990, c. 258; 1996, c. 463; 2003, c. 126; 2005, c. 135; 2007, cc. 369, 468, 869; 2008, c. 749; 2009, c. 740; 2011, cc. 445, 480; 2013, cc. 187, 377; 2014, c. 287; 2018, c. 128; 2021, Sp. Sess. I, c. 188.

§ 16.1-69.56. Retention of financial and administrative records.

Appropriate retention periods for the financial and administrative records of the district courts and magistrates shall be prescribed by the Supreme Court of Virginia. In the case of financial records only, the retention period prescribed by the court shall be subject to approval by the Auditor of Public Accounts.

1983, c. 499; 1987, c. 160.

§ 16.1-69.57. Destruction of court records.

The clerk of each district court shall destroy the court records upon expiration of the appropriate retention period as set forth in §§ 16.1-69.55 and 16.1-69.56 and consistent with the requirements of confidentiality for juvenile records. The Supreme Court shall determine the methods to be used in

destroying court records. Likewise, magistrates shall destroy records retained in the office of the magistrate upon the expiration of the appropriate retention period as set forth in § 16.1-69.56.

1983, c. 499; 1987, c. 160.

§ 16.1-69.58. Processing, retention and reproduction of court records; retention and destruction of records in which final disposition was entered before January 1, 1985.

The Committee on District Courts, after consultation with the Executive Secretary of the Supreme Court, shall determine the methods for processing, retention and reproduction of court records and all other records required by statute to be retained in the district courts and for records retained in the office of the magistrate.

The provisions for retention and destruction of records contained in §§ 16.1-117, 16.1-118 and 16.1-118.1 shall apply to court records in district court cases in which a final disposition was entered before January 1, 1985.

1983, c. 499; 1987, c. 160.

Chapter 5 - COURTS OF LIMITED JURISDICTION

§§ 16.1-70 through 16.1-75. Repealed.

Repealed by Acts 2018, c. 164, cl. 2.

§ 16.1-75.1. Repealed.

Repealed by Acts 1973, c. 545.

Chapter 6 - VENUE, JURISDICTION AND PROCEDURE IN CIVIL MATTERS

Article 1 - VENUE IN CIVIL MATTERS

§ 16.1-76. Venue.

In all civil actions over which the general district courts have jurisdiction pursuant to § 16.1-77, venue shall be determined in accordance with the provisions of Chapter 5 (§ 8.01-257 et seq.) of Title 8.01.

1956, c. 555; 1977, c. 624; 1978, c. 421.

Article 2 - Jurisdiction in Civil Actions

§ 16.1-77. Civil jurisdiction of general district courts; amending amount of claim.

Except as provided in Article 5 (§ 16.1-122.1 et seq.), each general district court shall have, within the limits of the territory it serves, civil jurisdiction as follows:

(1) Exclusive original jurisdiction of (i) any claim to specific personal property or to any debt, fine or other money, or to damages for breach of contract or for injury done to property, real or personal, when the amount of such claim does not exceed $4,500, exclusive of interest and any attorney fees, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds $4,500 but does not exceed $25,000, exclusive of interest and any

attorney fees, and (ii) any action for injury to person, regardless of theory, and any action for wrongful death as provided for in Article 5 (§ 8.01-50 et seq.) of Chapter 3 of Title 8.01 when the amount of such claim does not exceed $4,500, exclusive of interest and any attorney fees, and concurrent jurisdiction with the circuit courts having jurisdiction in such territory of any such claim when the amount thereof exceeds $4,500 but does not exceed $50,000, exclusive of interest and any attorney fees. However, the jurisdictional limit shall not apply with respect to distress warrants under the provisions of § 8.01-130.4, cases involving liquidated damages for violations of vehicle weight limits pursuant to § 46.2-1135, nor cases involving forfeiture of a bond pursuant to § 19.2-143. While a matter is pending in a general district court, upon motion of the plaintiff seeking to increase the amount of the claim, the court shall order transfer of the matter to the circuit court that has jurisdiction over the amended amount of the claim without requiring that the case first be dismissed or that the plaintiff suffer a nonsuit, and the tolling of the applicable statutes of limitations governing the pending matter shall be unaffected by the transfer. Except for good cause shown, no such order of transfer shall issue unless the motion to amend and transfer is made at least 10 days before trial. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk of the court to which the case is transferred, and such clerk shall process the claim as if it were a new civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for entry, after which time the case shall be removed from the pending docket of the transferring court and the order of transfer placed among its records. The plaintiff shall provide a certified copy of the transfer order to the receiving court.

(2) Jurisdiction to try and decide attachment cases when the amount of the plaintiff's claim does not exceed $25,000 exclusive of interest and any attorney fees.

(3) Jurisdiction of actions of unlawful entry or detainer as provided in Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01, and in Chapter 14 (§ 55.1-1400 et seq.) of Title 55.1, and the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim or cross-claim in an unlawful detainer action that includes a claim for damages sustained or rent against any person obligated on the lease or guarantee of such lease.

(4) Except where otherwise specifically provided, all jurisdiction, power and authority over any civil action or proceeding conferred upon any general district court judge or magistrate under or by virtue of any provisions of the Code.

(5) Jurisdiction to try and decide suits in interpleader involving personal or real property where the amount of money or value of the property is not more than the maximum jurisdictional limits of the general district court. However, the maximum jurisdictional limits prescribed in subdivision (1) shall not apply to any claim, counter-claim, or cross-claim in an interpleader action that is limited to the disposition of an earnest money deposit pursuant to a real estate purchase contract. The action shall be brought in accordance with the procedures for interpleader as set forth in § 8.01-364. However, the general district court shall not have any power to issue injunctions. Actions in interpleader may be brought by either the stakeholder or any of the claimants. The initial pleading shall be either by motion for judgment, by warrant in debt, or by other uniform court form established by the Supreme Court of

Virginia. The initial pleading shall briefly set forth the circumstances of the claim and shall name as defendant all parties in interest who are not parties plaintiff.

(6) Jurisdiction to try and decide any cases pursuant to § 2.2-3713 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or § 2.2-3809 of the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.), for writs of mandamus or for injunctions.

(7) Jurisdiction to try and decide any cases pursuant to § 55.1-1819 of the Property Owners' Association Act (§ 55.1-1800 et seq.) or § 55.1-1959 of the Virginia Condominium Act (§ 55.1-1900 et seq.).

(8) Concurrent jurisdiction with the circuit courts to submit matters to arbitration pursuant to Chapter 21 (§ 8.01-577 et seq.) of Title 8.01 where the amount in controversy is within the jurisdictional limits of the general district court. Any party that disagrees with an order by a general district court granting an application to compel arbitration may appeal such decision to the circuit court pursuant to § 8.01-581.016.

For purposes of this section, the territory served by a county general district court expressly authorized by statute to be established in a city includes the general district court courtroom.

1956, c. 555; 1968, c. 5; 1973, c. 440; 1978, c. 40; 1981, c. 404; 1983, c. 616; 1987, cc. 87, 93; 1988, c. 799; 1990, cc. 217, 471; 1991, c. 135; 1992, cc. 111, 777; 1995, c. 799; 1997, c. 753; 1998, cc. 482, 495; 1999, cc. 945, 987; 2001, cc. 473, 477; 2002, cc. 200, 506, 645; 2004, cc. 344, 460; 2008, cc. 840, 843; 2009, c. 663; 2010, c. 181; 2011, cc. 14, 76, 372, 378, 702; 2016, c. 181; 2017, c. 657; 2019, cc. 240, 787; 2020, cc. 898, 899; 2021, Sp. Sess. I, cc. 199, 463.

§ 16.1-77.1. When general district court may give judgment on forthcoming bond.

A general district court may, on motion, after 10 days' notice of the time and place thereof, give judgment on any forthcoming bond taken by a sheriff or other officer upon a fieri facias issued by such court.

Code 1950, § 8-457; 1977, c. 624; 1983, c. 616; 2007, c. 869.

§ 16.1-77.2. Jurisdiction of partition of personal property and proceedings therefor.

Every general district court shall have jurisdiction of proceedings for partition of personal property, within the limits as to value and in accordance with the provisions hereinafter contained.

When joint owners of personal property of the value of more than $20 but not more than maximum jurisdictional limits of the court as provided in § 16.1-77 (1) cannot agree upon a partition thereof, any party in interest may compel partition, the proceeding for which shall be commenced by a petition presented to a general district court as prescribed in subdivision 5 of § 8.01-262. A copy of the petition, together with a notice of the time and place the petitioner will ask for a hearing thereon, shall be served on each of the defendants at least 10 days prior to the day of hearing. The court shall hear and decide the matter without the appointment or use of commissioners.

Any party aggrieved by a final judgment rendered by the general district court in any such proceeding shall have an appeal of right to any circuit court of the county or city having jurisdiction of appeals from

such general district court, to be perfected within the time, and in all other respects in accordance with the provisions of law concerning appeals from general district courts in other civil cases.

Code 1950, § 8-703; 1952, c. 252; 1972, c. 368; 1977, c. 624; 1983, c. 616; 2007, c. 869.

§ 16.1-78. Judgment by confession not affected.

None of the provisions of § 16.1-77 shall affect the right of any person to obtain judgment by confession in any court of record having jurisdiction thereof, or in the clerk's office of any such court, when such right exists under some other statute or act, on any claim for money, property or damages, regardless of the amount of such claim for money or damages or the value of such property.

1956, c. 555.

Article 3 - PROCEDURE IN CIVIL CASES

§ 16.1-79. Actions brought on warrant.

A civil action in a general district court may be brought by warrant directed to the sheriff or to any other person authorized to serve process in such county or city, requiring the person against whom the claim is asserted to appear before the court on a certain day, not exceeding sixty days from the date of service thereof, to answer the complaint of the plaintiff set out in the warrant. After the warrant has been issued and delivered for service it shall not be altered, nor any blank filled, except by order of the court.

1956, c. 555; 1991, c. 26.

§ 16.1-79.1. Electronic filing of civil cases.

The general district courts shall accept case data in an electronic format for any civil action filed. The use of the electronic transfer shall be at the option of the plaintiff or the plaintiff's attorney, and if electronic transfer is utilized, the plaintiff or the plaintiff's attorney shall comply with the security and data configuration standards established by the Office of the Executive Secretary of the Supreme Court. If electronic transfer is utilized, the plaintiff or the plaintiff's attorney shall be responsible for filing with the clerk of the general district court the paper copies of any pleading for the proper processing of such civil actions as otherwise required by law, unless the plaintiff or the plaintiff's attorney has established at his expense a system for the filing of a pleading generated through the electronic transfer of data; such system has been authorized by, and meets the filing requirements of, the clerk; and the plaintiff or plaintiff's attorney transmits the process in an electronic format directly with the sheriff as otherwise provided by law. Notwithstanding any electronic transfer, the plaintiff shall remain responsible for payment of any required fees upon case initiation or filing and as otherwise required by law.

2010, cc. 550, 622; 2011, c. 766.

§ 16.1-80. Service of warrant and return thereof.

The officer issuing a warrant shall deliver to the officer to whom it is directed, or to the plaintiff, for service, one or more original warrants and as many copies as there are defendants upon whom it is to be served. Service of the warrant shall be made as provided in Chapter 8 (§ 8.01-285 et seq.) of Title

8.01, but the warrant must be served not less than five days before the return day. Returns shall be made on the original, or on one or more of them if there be more than one issued, and shall show when, where, how and upon whom service was made. The warrant or warrants with the returns thereon shall be delivered to the court prior to the return day thereof, but if not so delivered may, in the discretion of the judge of the court, be delivered before the court convenes on the return day.

1956, c. 555.

§ 16.1-81. Actions brought by motion for judgment.

A civil action in a general district court may be brought by motion for judgment. Such motion shall be in writing, signed by the plaintiff or his attorney, and shall contain a caption setting forth the name of the court and the title of the action, which shall include the names of all parties and the address of each defendant. It shall state the facts on which the plaintiff relies, and shall be sufficient if it clearly informs the defendant or defendants of the true nature of the claim asserted. The motion shall notify the defendant or defendants of the day on which such motion shall be made, which day shall not be more than sixty days from the date of service of the motion.

1956, c. 555; 1990, c. 762.

§ 16.1-81.1. Certain corporations; pro se representation.

When the amount in controversy in any action at law in a general district court does not exceed the sum of $2,500, exclusive of interest, attorney fees contracted for in the instrument, and costs, a corporate plaintiff or defendant, the stock of which is held by no more than five persons and is not publicly offered or planned to be publicly offered at the time of the litigation, may be represented by an officer of that corporation who shall have all the rights and privileges given an individual to represent, plead, and try a case without an attorney, provided that such officer has the unanimous consent of all the shareholders to do so.

2009, c. 666.

§ 16.1-82. Service of motion; return thereon and delivery to the court; how disposed of.

The plaintiff shall file with the clerk of the court an original motion for judgment and as many copies as there are defendants upon whom it is to be served, with the proper fees. The original motion and copies thereof shall then be delivered to the sheriff or other person for service. Service of such motion shall be as provided in Chapter 8 (§ 8.01-285 et seq.) of Title 8.01, but the motion must be served not less than five days before the return day. Returns shall be made on the original motion for judgment and shall show when, where, how and upon whom service was made. The motion or motions with the returns thereon shall be returned by the sheriff or other persons making service to the court within three days of the date service is made. The motion for judgment shall be heard and disposed of by the court in the same manner as if it were a civil warrant. Except as otherwise provided herein, procedure upon such motion for judgment shall conform as nearly as practicable to the procedure in motions for judgment prescribed by Rules of Court for civil actions in courts of record.

1956, c. 555; 1981, c. 576; 1990, c. 943.

§ 16.1-83. Consent of parties required for trial within five days of service.

No trial of a warrant or motion for judgment under this title may be had within five days after service thereof except with the consent of the parties. Proceedings to enforce the rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) shall be conducted within the time limitations specified in § 2.2-3713.

1956, c. 555; 1990, c. 217.

§ 16.1-83.1. Certification of expert witness opinion at time of service of process.

Every warrant in debt, counter claim, or third party claim in a medical malpractice action, at the time the plaintiff requests service of process upon a defendant, or requests a defendant to accept service of process, shall be deemed a certification that the plaintiff has obtained from an expert whom the plaintiff reasonably believes would qualify as an expert witness pursuant to subsection A of § 8.01-581.20 a written opinion signed by the expert witness that, based upon a reasonable understanding of the facts, the defendant for whom service of process has been requested deviated from the applicable standard of care and the deviation was a proximate cause of the injuries claimed. This certification is not necessary if the plaintiff, in good faith, alleges a medical malpractice action that asserts a theory of liability where expert testimony is unnecessary because the alleged act of negligence clearly lies within the range of the jury's common knowledge and experience.

The certifying expert shall not be required to be an expert witness expected to testify at trial nor shall any defendant be entitled to discover the identity or qualifications of the certifying expert or the nature of the certifying expert opinions. Should the certifying expert be identified as an expert expected to testify at trial, the opinions and bases therefor shall be discoverable pursuant to Rule 4:1 of the Rules of Supreme Court of Virginia with the exception of the expert's status as a certifying expert.

Upon written request of any defendant, the plaintiff shall, within 10 business days after receipt of such request, provide the defendant with a certification form which affirms that the plaintiff had obtained the necessary certifying expert opinion at the time service was requested or affirms that the plaintiff did not need to obtain a certifying expert opinion. The court, upon good cause shown, may conduct an in camera review of the certifying expert opinion obtained by the plaintiff as the court may deem appropriate. If the plaintiff did not obtain a necessary certifying expert opinion at the time the plaintiff requested service of process on a defendant, the court shall impose sanctions according to the provisions of § 8.01-271.1 and may dismiss the case with prejudice.

2005, cc. 649, 692; 2007, c. 489; 2013, cc. 65, 610.

§ 16.1-84. When action or proceeding not lost; when matured for hearing.

In the event the return day of any civil action or other proceeding is a day on which the court does not sit, such action or proceeding shall not be lost, but shall be deemed matured for hearing or other disposition by the court on the first day thereafter on which the court sits for hearing civil actions.

1956, c. 555; 1958, c. 210.

§ 16.1-85. What term "warrant" to include.

Whenever the word "warrant" is used in any section of the Code or act of assembly relating to civil proceedings, it shall, unless the context or use indicates a different meaning, be construed to mean "warrant or motion for judgment."

1956, c. 555.

§ 16.1-86. When action deemed brought.

A civil action on a warrant in a district court shall be deemed brought when the memorandum required by § 8.01-290 is filed with the clerk, magistrate, or other officer authorized to issue warrants and the required fee is paid. The officer issuing the warrant shall note on the memorandum the date and time it is received by him with the required fee.

A civil action on a motion for judgment as authorized in § 16.1-81 shall be deemed brought on the day on which the motion is filed with the court.

Whenever any other pleading in any civil action is filed in a district court, the clerk or his designee shall stamp or mark the date received and time of filing on the face of such pleading.

1956, c. 555; 1980, c. 739; 1990, c. 109.

§ 16.1-86.1. Repealed.

Repealed by Acts 1990, c. 109.

§ 16.1-87. Repealed.

Repealed by Acts 1983, c. 499.

§ 16.1-88. Procedure when plaintiff sues on sworn claim.

If a civil action in a general district court is upon a contract, express or implied, for the payment of money, or unlawful detainer pursuant to § 55.1-1245 or 55.1-1415 for the payment of money or possession of the premises, or both, or is brought by the Commonwealth or any political subdivision or agency thereof for the collection of taxes or to enforce any other obligation for the payment of money, an affidavit and a copy of the account if there be one and, in actions pursuant to § 55.1-1245 or 55.1-1415, proof of required notice may be made and served on the defendant in accordance with § 8.01-296 with the warrant or motion for judgment as provided in § 8.01-28 for actions at law, whereupon the provisions of § 8.01-28 shall be applicable to the further proceedings therein. The affidavit and the account if there is one and proof of appropriate notice may be attached to the warrant or motion, in which event the combined papers shall be served as a single paper.

1956, c. 555; 1973, c. 440; 1991, c. 503.

§ 16.1-88.01. Counterclaims.

In any proceeding before any general district court a defendant may, at his option, at any time before trial, plead in writing as a counterclaim, any cause of action at law for a money judgment in personam, or any matter which would entitle him to relief in equity in the nature of damages, that he has against the plaintiff or all plaintiffs jointly, whether or not it grows out of any transaction mentioned in the warrant or notice of motion for judgment, whether or not it is for liquidated damages, whether or not it is in

tort or contract, and whether or not the amount demanded exceeds the amount claimed by the plaintiff in the warrant or notice of motion for judgment; however, no such counterclaim shall be filed or heard when the amount claimed therein exceeds the amount within the jurisdiction of such court.

Upon the request of either party, bills of particulars and grounds of defense may be ordered to ensure a fair trial on the merits of the issue presented. The court may, in its discretion, hear the counterclaim together with the original case, or may order and hold a separate hearing of any cause of action asserted in a counterclaim. In either event, the court shall render such final judgment on the whole case as the law and the evidence require.

Code 1950, § 8-239.1; 1954, c. 608; 1977, c. 624; 1998, cc. 482, 495.

§ 16.1-88.02. Cross-claims.

Subject to the jurisdictional limitations prescribed by law, in any proceeding before a general district court a defendant may, at his option, at any time before trial, plead in writing as a cross-claim any cause of action that he has against one or more defendants growing out of any matter pleaded in the plaintiff's warrant or notice or motion for judgment. The court may order and hold a separate hearing upon any cause of action asserted in a cross-claim.

Code 1950, § 8-239.2; 1954, c. 608; 1977, c. 624.

§ 16.1-88.03. Pleadings and other papers by certain parties not represented by attorneys.

A. Any corporation, partnership, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership or business trust, the Fort Monroe Authority, and the Department of Military Affairs, when the amount claimed in any civil action pursuant to subdivision (1) or (3) of § 16.1-77 does not exceed the jurisdictional amounts authorized in such subsections, exclusive of interest, may prepare, execute, file, and have served on other parties in any proceeding in a general district court a warrant in debt, motion for judgment, warrant in detinue, distress warrant, summons for unlawful detainer, counterclaim, crossclaim, suggestion for summons in garnishment, garnishment summons, order of possession, writ of eviction, writ of fieri facias, interpleader and civil appeal notice without the intervention of an attorney. Such papers may be signed by a corporate officer, a manager of a limited liability company, a general partner of any form of partnership or a trustee of any business trust, or such corporate officer, with the approval of the board of directors, or manager, general partner or trustee may authorize in writing an employee, a person licensed under the provisions of § 54.1-2106.1, or the property manager or the managing agent of a landlord as defined in § 55.1-1200 pursuant to the written property management agreement to sign such papers as the agent of the business entity. Only an agency employee designated in writing by the Adjutant General may sign such papers on behalf of the Department of Military Affairs. However, this section shall not apply to an action under subdivision (1) or (3) of § 16.1-77 which was assigned to a corporation, partnership, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership or business trust, or individual solely for the purpose of enforcing an obligation owed or right inuring to another.

B. Nothing in this section shall allow a nonlawyer to file a bill of particulars or grounds of defense or to argue motions, issue a subpoena, rule to show cause, or capias; file or interrogate at debtor interrogatories; or to file, issue or argue any other paper, pleading or proceeding not set forth in subsection A.

C. The provisions of § 8.01-271.1 shall apply to any pleading, motion or other paper filed or made pursuant to this section.

D. Parties not represented by counsel, and who have made an appearance in the case, shall promptly notify in writing the clerk of court wherein the litigation is pending, and any adverse party, of any change in the party's address necessary for accurate mailing or service of any pleadings or notices. In the absence of such notification, a mailing to or service upon a party at the most recent address contained in the court file of the case shall be deemed effective service or other notice.

1990, c. 645; 1992, c. 814; 1993, cc. 473, 478; 2003, cc. 665, 667; 2004, cc. 338, 365; 2005, c. 136; 2006, c. 374; 2017, c. 690; 2019, cc. 180, 477, 700; 2020, cc. 84, 194.

§ 16.1-88.1. Repealed.

Repealed by Acts 1980, c. 183.

§ 16.1-88.2. Evidence of medical reports, statements, or records; testimony of health care provider or custodian of records.

In a civil suit tried in a general district court or appealed to the circuit court to recover damages for personal injuries or to resolve any dispute with an insurance company or health care provider, either party may present evidence as to the extent, nature, and treatment of the injury, the examination of the person so injured, and the costs of such treatment and examination by the following:

1. A report or statement from the treating or examining health care provider as defined in § 8.01-581.1 or a health care provider licensed outside of the Commonwealth for his treatment of the plaintiff outside of the Commonwealth. Such report or statement shall be admitted if the party intending to present such evidence gives the opposing party or parties a copy of such evidence and written notice of such intention 10 days in advance of trial and if attached to or contained in such evidence is a sworn declaration of (i) the treating or examining health care provider that (a) the person named therein was treated or examined by such health care provider, (b) the information contained in the report or statement is true and accurate and fully descriptive as to the nature and extent of the injury, and (c) any statement of costs contained in the report or statement is true and accurate or (ii) the custodian of such report or statement that the same is a true and accurate copy of the report or statement; or

2. The bills as defined in subsection A of § 8.01-413.01 or records of a treating or examining health care provider as defined in § 8.01-581.1 or a health care provider licensed outside of the Commonwealth for its treatment of the plaintiff outside of the Commonwealth. Such provider's records or bills shall be admitted if (i) the party intending to present evidence by the use of records or bills gives the opposing party or parties a copy of the records or bills and written notice of such intention 10 days

in advance of trial and (ii) attached to the records or bills is a sworn declaration of the custodian thereof that the same is a true and accurate copy of the records or bills of such provider.

If, thereafter, the plaintiff or defendant summons the health care provider or custodian making such statement to testify in proper person or by deposition, the court shall determine which party shall pay the fee and costs for such appearance or depositions, or may apportion the same among the parties in such proportions as the ends of justice may require. If such health care provider or custodian is not subject to subpoena for cross-examination in court or by a deposition, then the court shall allow a reasonable opportunity for the party seeking the subpoena for such health care provider or custodian to obtain his testimony as the ends of justice may require. The plaintiff may only present evidence pursuant to this section in circuit court if he has not requested an amount in excess of the ad damnum in the motion for judgment filed in the general district court.

1978, c. 490; 1983, c. 616; 1985, c. 379; 1989, c. 563; 1990, c. 279; 1996, c. 749; 2005, c. 811; 2007, cc. 425, 869; 2013, cc. 78, 145; 2014, cc. 25, 85, 446; 2022, cc. 469, 470.

§ 16.1-89. Subpoena duces tecum; attorney-issued subpoena duces tecum.

A judge or clerk of a district court may issue a subpoena duces tecum pursuant to the terms of Rule 4:9A of the Rules of the Supreme Court of Virginia except that such subpoena may be directed to a party to the case as well as to a person who is not a party.

Subpoenas duces tecum for medical records issued by an attorney shall be subject to the provisions of §§ 8.01-413 and 32.1-127.1:03 except that no separate fee for issuance shall be imposed.

A subpoena duces tecum may also be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena duces tecum shall be on a form approved by the Committee on District Courts, signed by the attorney as if a pleading and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas duces tecum issued by a clerk shall apply mutatis mutandis, except that attorneys may not issue subpoenas duces tecum in those cases in which they may not issue a summons as provided in § 8.01-407. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of evidence is desired. When an attorney-at-law transmits one or more subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply.

If the time for compliance with a subpoena duces tecum issued by an attorney is less than 14 days after service of the subpoena, the person to whom it is directed may serve upon the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection or testing should not be had. If objection is made, the party on whose behalf the subpoena was issued and served shall not be entitled to the requested production, inspection or testing, except pursuant to an order of the court, but may, upon notice to the person to whom the subpoena was directed, move for

an order to compel production, inspection or testing. Upon such timely motion, the court may quash, modify or sustain the subpoena.

1956, c. 555; 1979, c. 668; 1984, c. 500; 1986, c. 160; 2000, c. 813; 2004, c. 335.

§ 16.1-90. Recognizance upon continuation of case.

Judges of courts not of record may, upon the continuance of any case, require the witnesses or any of them, to enter into recognizance in such penalty as the judge may deem proper, either with or without security, for their appearance at a subsequent date to give evidence in the case, such recognizance to conform to the requirements of §§ 19.2-135 through 19.2-137 for taking recognizance of witnesses.

1956, c. 555; 1960, c. 372.

§ 16.1-91. Repealed.

Repealed by Acts 1984, c. 25.

§ 16.1-91.1. Costs to be included in judgment on forthcoming bond.

The judge of a general district court, on giving judgment on a forthcoming bond, shall include in the costs of the judgment the clerk's fee as stated in subdivision A 21 of § 17.1-275; and the clerk shall not receive any fee or reward for any service he is required to perform by the provisions of § 8.01-529, except that specified in subdivision A 21 of § 17.1-275.

Code 1950, § 8-460; 1962, c. 10; 1977, c. 624.

§ 16.1-91.2. Judge to keep record of judgment on forthcoming bond; how to endorse execution.

The judge of the general district court, rendering a judgment under the provisions of Chapter 19 (§ 8.01-526 et seq.) of Title 8.01, shall keep a record thereof in the same manner as he is required by law in other cases. He shall not stay execution upon such judgment, and shall endorse on any fieri facias issued thereon "no security is to be taken."

Code 1950, § 8-461; 1962, c. 10; 1977, c. 624.

§ 16.1-92. Repealed.

Repealed by Acts 2007, c. 869, cl. 2.

§ 16.1-93. Principles applicable to trial of cases.

Every action or other proceeding in a court not of record shall be tried according to the principles of law and equity, and when the same conflict the principles of equity shall prevail. No warrant, motion or other pleading shall be dismissed by reason of a mere defect, irregularity or omission in the proceedings or in the form of the pleadings when the same may be corrected by an order of the court. The court may direct such proceedings and enter such orders as may be necessary to correct any such defects, irregularities and omissions, and to bring about a trial of the merits of the controversy and promote substantial justice to all parties. The court may make such provisions as to costs and continuances as may be just.

1956, c. 555.

§ 16.1-93.1. Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing.

Notwithstanding any other provision of law, in any proceeding under this chapter in which a party or witness is incarcerated or when otherwise authorized by the court, the court may, in its discretion, conduct any hearing using a telephonic communication system or an electronic audio and video communication system to provide for the appearance of any parties and witnesses. Any electronic audio and video communication system used to conduct such a hearing shall meet the standards set forth in subsection B of § 19.2-3.1.

2001, c. 513.

§ 16.1-94. Judgment to be noted on papers; formal orders may be entered.

Whenever a judgment is rendered in a court not of record the judgment shall be entered on the warrant, motion for judgment, counterclaim, cross-claim or other pleading and signed by the judge, or the signature of the judge may be affixed by a facsimile stamp, in which event the judge shall initial a notation of the judgment made on the warrant or other paper. If the action is on a note, bond or other written obligation, the date and amount of the judgment rendered shall be noted thereon, to which notation the judge or clerk shall affix his name or his initials. Nothing in this section shall be construed to prevent the judge from entering a formal order in any case in which he deems such order to be appropriate, including but not limited to settlement and installment orders endorsed by counsel, or to affect the validity of any formal order so entered. If such action is on a lease for the recovery of rent or possession of property this section shall not operate to require marking of such lease unless the judge deems such marking necessary.

1956, c. 555; 1962, c. 361; 2004, c. 341.

§ 16.1-94.01. When and how satisfaction entered on judgment.

A. When satisfaction of any judgment rendered in a court not of record is made, the judgment creditor shall by himself, or his agent or attorney, give written notice of such satisfaction, within 30 days of receipt, to the clerk of the court in which the judgment was rendered. Such notice shall include the docket number, the names of the parties, and the date of the judgment. The clerk of the court shall then mark the judgment satisfied. For any money judgment marked as satisfied pursuant to this section, nothing herein shall satisfy an unexecuted order of possession entered pursuant to § 8.01-126.

B. If the judgment creditor fails to comply with subsection A, the judgment debtor, his heirs or personal representatives, may, on motion, after 10 days' notice thereof to the judgment creditor, or his assignee, his personal representative, or his agent or attorney, apply to the court in which the judgment was rendered to have the judgment marked satisfied. Upon proof that the judgment has been satisfied, the clerk shall mark the judgment satisfied. If the judgment creditor or his legal representatives cannot be reasonably located, the notice may be published and posted as an order of publication is required to be published and posted under §§ 8.01-316 and 8.01-317.

C. The cost of such proceedings, including reasonable attorney fees and the cost of publication, may be ordered to be paid by the judgment creditor.

1999, c. 370; 2015, c. 547; 2017, c. 481.

§ 16.1-94.1. Limitations on enforcement of district court judgments.

For judgments entered in a general district court on or after January 1, 1985, no execution shall be issued or action brought on such judgment, including a judgment in favor of the Commonwealth, after ten years from the date of such judgment except as provided in § 16.1-69.55 B 4.

1983, c. 499.

§ 16.1-95. Abstract of judgment.

At any time while the papers in any case in which a judgment has been rendered by a general district court are retained by the court, the judge or clerk of the court shall certify and deliver an abstract of the judgment to any person interested therein. In the absence of any such judge or clerk, or in the event of a vacancy in the office of such judge or clerk, such abstract of judgment may be made and certified by the substitute judge or clerk, if there be one, or by any other judge of a general district court in such county or city.

1956, c. 555; 1983, c. 499.

§ 16.1-96. What abstract to contain.

An abstract of a judgment rendered in a court not of record shall contain the information required by § 8.01-449 for entry in the judgment dockets of courts of record, except that it shall not be necessary to include any information as to executions which have been issued thereon.

1956, c. 555.

§ 16.1-97. Repealed.

Repealed by Acts 1987, c. 98.

§ 16.1-97.1. When a new trial is granted.

A. No new trial may be granted from any judgment in a district court unless a motion by one of the parties is made within thirty days after the date of judgment, not including the date of entry of such judgment. The motion for new trial shall be heard by the judge who rendered the judgment, but if the judge is not in office, is absent from the jurisdiction, or is otherwise unavailable to hear the motion for new trial, such motion may be heard by a judge of that district court.

B. A hearing shall be held by the court, as provided herein, and the court shall rule on any such motions not later than forty-five days after the date of judgment, not including the date of entry of such judgment. Nothing contained in this section shall operate to alter the granting of a new trial by the court pursuant to § 8.01-428, or to alter the requirements for appeal from any judgment of any district court as otherwise provided by law.

1987, c. 98; 1988, c. 506.

§ 16.1-98. Fieri facias or writ of possession on judgment.

Upon a judgment being rendered in a general district court a writ of fieri facias or a writ of possession shall be issued thereon only upon request of the judgment creditor, his assignee or his attorney. When the judgment is for personal property and the defendant is not given the option under § 8.01-121 to pay the amount of the judgment or surrender the property, the plaintiff may, at his option, have a writ of possession for the specific property and a writ of fieri facias for the damages or profits and costs, and if the writ of possession prove ineffectual he may have a writ of fieri facias for the alternate value. The judge or clerk shall write or stamp upon the docket of the court, or upon the original warrant or motion, the issuing of each such writ and the date of issuance.

1956, c. 555; 1968, c. 260; 1974, c. 666; 1977, c. 624; 1983, c. 499.

§ 16.1-99. When and where executions returnable; to whom directed.

A writ of fieri facias or a writ of possession issued from a general district court shall be made returnable within 90 days to the court from which it was issued, except that a writ of fieri facias issued in the instance of a wage garnishment shall be returnable not more than 180 days after the date of issuance. If, after the return day of the writ and the completion of any garnishment, interrogatory or other proceeding in connection therewith, the papers in the case have been returned to a circuit court, then the writ and other papers in connection with such proceeding shall likewise be returned to the circuit court and filed with the papers in the case. A writ of fieri facias may be directed to the sheriff of any county or to the sergeant or constable of any corporation.

1956, c. 555; 1979, c. 45; 2003, c. 234.

§ 16.1-100. Additional executions; by whom issued.

Subject to the limitations prescribed in Chapter 17 (§ 8.01-426 et seq.) of Title 8.01, additional executions may be issued as provided in § 8.01-475. Such executions shall be issued by the judge or clerk of the general district court and shall be returned to the court in which such papers are held on the return day of the execution.

1956, c. 555; 1983, c. 499.

§ 16.1-101. Proceedings against officer failing to make or making improper return.

If an officer fail to make due return of any execution issued from a court not of record, he may, on motion of the plaintiff and after ten days' notice, be fined from time to time by the judge of such court in an amount not less than five nor more than twenty dollars for each offense. And if an officer make such return upon an execution issued from a court not of record as would, on a motion against the officer, authorize judgment to be entered against him for all or any part of the amount of such execution if the execution had issued from a court of record, the creditor on whose behalf such execution issued, or his personal representative, may, on a motion before the judge of such court after like notice obtain such judgment against the officer, his sureties and others as could be given by a court of record if the execution had issued therefrom. Section 16.1-106 with respect to appeals in civil actions shall apply to such judgment. Notwithstanding the provisions of this section any such officer may be proceeded

against as provided in Chapter 16 (§ 15.2-1600 et seq.) of Title 15.2, or a motion for judgment may be brought as authorized in § 8.01-227.

1956, c. 555.

§ 16.1-102. Officers and sureties liable for money collected after return day.

If, after the return day of an execution issued on a judgment rendered by a court not of record, an officer shall collect money or take possession of property under such execution, he and his sureties shall be liable for such money or property in like manner as if it had been collected or taken before the return day.

1956, c. 555.

§ 16.1-103. Proceedings by interrogatories.

Whenever a fieri facias has been issued upon a judgment rendered in a general district court the judge or clerk of the court may issue the summons provided for in § 8.01-506. In such case the judge of the general district court shall have all of the powers and authority respecting interrogatories conferred by §§ 8.01-506 to 8.01-510 upon any court or judge mentioned therein. The commissioner before whom any person is required to appear by such summons shall have the same powers and authority as if such summons had been issued under § 8.01-506. All interrogatories, answers, reports and other proceedings under such summons, and also all money, evidences of indebtedness and other security in the hands of an officer which are directed by any section of Chapter 18 (§ 8.01-466 et seq.) of Title 8.01 to be returned or delivered to such court or judge, or to the clerk's office of such court, shall, when the summons was issued by a judge of a general district court be returned or delivered in like manner to the court from which the summons issued.

From any order of the judge of the general district court which involves the disposition of any money or property exceeding the sum of fifty dollars in value, exclusive of interest, there shall be an appeal in the same manner and upon the same conditions as in appeals from judgments rendered in civil matters in general district courts.

1956, c. 555; 1978, c. 66; 1983, c. 499.

§ 16.1-104. Repealed.

Repealed by Acts 1983, c. 499.

§ 16.1-105. Attachments.

The proceedings on any attachment brought in a court not of record shall conform to the provisions of Chapter 20 (§ 8.01-533 et seq.) of Title 8.01, but if an attachment is returned executed and the defendant has not been served with a copy thereof, and the amount claimed in the attachment does not exceed $500, exclusive of interest and any attorney's fees contracted for in the instrument, the judge or clerk of the court, upon affidavit in conformity with §§ 8.01-316 and 8.01-317, shall forthwith cause a copy of the attachment to be posted at the front door of the courthouse of the county or the front door of the courtroom of the city or town wherein the attachment was issued, and shall file a certificate of the fact with the papers in the case, and, in addition to such posting, the plaintiff in the attachment or his

attorney shall give to the judge or his clerk the last known address or place of abode of the defendant, verified by affidavit, and the judge or clerk shall forthwith mail a copy of the attachment to the defendant at his last known address or place of abode, or if the defendant be a corporation, at its last known address. The mailing of the copy as herein required shall be certified by the judge or clerk in writing, and such certification shall be filed with the papers in the case. Fifteen days after the copy of the attachment has been posted and a copy thereof mailed as herein required, the court may hear and decide the attachment. If the amount claimed in the attachment is more than $500, exclusive of interest and any attorney's fees contracted for in the instrument, an order of publication shall be entered and published and other proceedings had in accordance with the provisions of §§ 8.01-316, 8.01-317, 8.01-318, and 8.01-320. Personal service on a nonresident defendant out of this Commonwealth as provided in § 8.01-320 shall have the same effect, and no other, as an order of publication duly executed or the posting and mailing of a copy of the attachment as provided herein.

If any such attachment is levied on real estate, the court shall not take cognizance of the case, but the same shall be forthwith removed to a court of record having jurisdiction of other actions removed therefrom, to be further proceeded with in such court of record as if the attachment had originated therein.

1956, c. 555; 2010, c. 343.

§ 16.1-106. Appeals from courts not of record in civil cases.

A. From any order entered or judgment rendered in a court not of record in a civil case in which the matter in controversy is of greater value than $20, exclusive of interest, any attorney fees contracted for in the instrument, and costs, or when the case involves the constitutionality or validity of a statute of the Commonwealth, or of an ordinance or bylaw of a municipal corporation, or of the enforcement of rights and privileges conferred by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or of a protective order pursuant to § 19.2-152.10, or of an action filed by a condominium unit owners' association or unit owner pursuant to § 55.1-1959, or of an action filed by a property owners' association or lot owner pursuant to § 55.1-1819, or from any order entered or judgment rendered in a general district court that alters, amends, overturns, or vacates any prior final order, there shall be an appeal of right, if taken within 10 days after such order or judgment, to a court of record. Such appeal shall be to a court of record having jurisdiction within the territory of the court from which the appeal is taken and shall be heard de novo.

B. If any party timely notices an appeal as provided by subsection A, such notice of appeal shall be deemed a timely notice of appeal by any other party on a final order or judgment entered in the same or a related action arising from the same conduct, transaction, or occurrence as the underlying action; however, all parties will be required to timely perfect their own respective appeals by giving a bond and the writ tax and costs, if any, in accordance with § 16.1-107.

If an appeal is noted and perfected after the sheriff has served the notice of intent to execute a writ of eviction, which is required to be served at least 72 hours before such eviction in accordance with law, the party noting or noting and perfecting such appeal shall notify the sheriff of such appeal.

C. The court from which an appeal is sought may refuse to suspend the execution of a judgment that refuses, grants, modifies, or dissolves an injunction in a case brought pursuant to § 2.2-3713 of the Virginia Freedom of Information Act. A protective order issued pursuant to § 19.2-152.10, including a protective order required by § 18.2-60.4, shall remain in effect upon petition for or the pendency of an appeal or writ of error unless ordered suspended by the judge of a circuit court or so directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

1956, c. 555; 1977, c. 624; 1990, c. 217; 1997, c. 831; 2009, c. 729; 2013, cc. 73, 97; 2014, c. 784; 2015, c. 714; 2020, cc. 1048, 1049.

§ 16.1-106.1. Withdrawal of appeal in civil cases.

A. A party who has appealed a final judgment or order rendered by a general district court or a juvenile and domestic relations district court in a civil case may seek to withdraw that appeal at any time.

1. If the appeal has not been perfected by posting a required appeal bond or paying required costs, or within 10 days after entry of the judgment or order when no appeal bond or costs are required to perfect the appeal, the appeal may be withdrawn by filing in the district court that entered the judgment or order and serving, in person or by first-class mail, on all parties or their counsel a written notice of intent to withdraw the appeal. When the appeal is withdrawn in the district court, the judgment or order of the district court shall have the same effect as if no appeal had been noted.

2. After the appeal is perfected by posting a required appeal bond or paying required costs, or after 10 days have elapsed since the entry of the judgment or order when no appeal bond or costs are required to perfect the appeal, an appealing party may request that the appeal be withdrawn by filing in the circuit court and serving, in person or by first-class mail, on all parties or their counsel a written notice of intent to withdraw the appeal.

B. Upon receipt of a notice of intent to withdraw an appeal filed in the circuit court, any party to the appeal, or the circuit court on its own motion, may give notice of a hearing, which shall be scheduled no later than the date set by the circuit court for trial of the appeal. Unless the hearing is scheduled at the time previously set for trial of the appeal, notice of the hearing shall be given, in person or by first-class mail, to all parties or their counsel, any non-party who has posted an appeal bond, and, when appropriate, the Department of Social Services, Division of Child Support Enforcement.

C. At the hearing, the circuit court shall determine whether any party objects to the proposed withdrawal. A party may object to the withdrawal of an appeal by filing in the circuit court and serving, in person or by first-class mail, on all parties or their counsel a written notice of objection to withdrawal of the appeal. If such a written objection is filed and served within a reasonable period after service of the notice of intent to withdraw the appeal, upon a showing of good cause by the party objecting to the withdrawal of the appeal, the circuit court may decline to permit the withdrawal of the appeal. If no such written objection is timely filed, the appeal shall be deemed to be withdrawn and, subject to subsections E and F, the circuit court shall enter an order disposing of the case in accordance with the judgment or order entered in the district court.

D. If a party who has appealed a judgment or order of a district court fails to appear in circuit court either at the time for setting the appeal for trial or on the trial date, the circuit court may, upon the motion of any party, enter an order treating the appeal as withdrawn and disposing of the case in accordance with this section. If no party appears for trial, the court may deem the appeal to be withdrawn without a motion and enter an order disposing of the case in accordance with this section.

E. Upon the withdrawal of an appeal from a general district court, the circuit court shall, upon request of a party who did not appeal the judgment or order, determine whether, as a result of the appeal, a party has a right to additional relief in the circuit court which has accrued since the appeal was noted, including but not limited to attorneys' fees provided for by contract or statute. Subject to any rights of a surety pursuant to § 16.1-110, the circuit court shall also order its clerk to disburse any cash bond posted to perfect the appeal as follows:

1. First, to the clerk of the court to cover taxable costs in the circuit court as provided by statute;

2. Second, to the prevailing party in an amount sufficient to satisfy any judgment or order entered in the general district court and any additional relief granted by the circuit court; and

3. Third, the balance, if any, to the person who posted the bond in the general district court.

In addition, the circuit court shall enter such order as may be appropriate to conclude all matters arising out of the appeal from the general district court.

F. Upon the withdrawal of an appeal from a juvenile and domestic relations district court, the circuit court shall, upon request of a party who did not appeal the judgment or order, determine whether, as a result of the appeal, a party has a right to additional relief in the circuit court which has accrued since the appeal was noted, including but not limited to attorneys' fees provided for by contract or statute. Subject to any rights of a surety pursuant to § 16.1-110, the circuit court shall also order its clerk to disburse any cash bond posted to perfect the appeal as follows:

1. First, to the clerk of the court to cover taxable costs in the circuit court as provided by statute;

2. Second, to the prevailing party in an amount sufficient to satisfy any judgment or order entered in the juvenile and domestic relations district court and any additional relief granted by the circuit court; and

3. Third, the balance, if any, to the person who posted the bond in the juvenile and domestic relations district court.

In addition, the circuit court shall enter such order as may be appropriate to conclude all matters arising out of the petition or motion filed in the juvenile and domestic relations district court and the appeal in circuit court, consistent with the judgment or order entered in the juvenile and domestic relations district court, as modified by the grant of any additional relief by the circuit court pursuant to this subsection. Unless the circuit court orders that the case remain in the circuit court, the case shall be remanded to the juvenile and domestic relations district court for purposes of enforcement and future modification and shall be subject to all the requirements of § 16.1-297.

2008, c. 706.

§ 16.1-107. Requirements for appeal.

A. No appeal shall be allowed unless and until the party applying for the same or someone for him shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, or in an amount sufficient to satisfy the judgment of the court in which it was rendered. Either such amount shall include the award of attorney fees, if any. Such bond shall be posted within 30 days from the date of judgment, except for an appeal from the judgment of a general district court on an unlawful detainer pursuant to § 8.01-129. However, no appeal bond shall be required of a plaintiff in a civil case where the defendant has not asserted a counterclaim, the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict, or an insane person, or the interest of a county, city, town or transportation district created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2. In a case where a defendant with indemnity coverage through a policy of liability insurance appeals, the bond required by this section shall not exceed the amount of the judgment that is covered by a policy of indemnity coverage.

B. In all civil cases, except trespass, ejectment, unlawful detainer against a former owner based upon a foreclosure against that owner, or any action involving the recovering rents, no indigent person shall be required to post an appeal bond. In cases of unlawful detainer against a former owner based upon a foreclosure against that owner, a person who has been determined to be indigent pursuant to the guidelines set forth in § 19.2-159 shall post an appeal bond within 30 days from the date of judgment.

C. In cases of unlawful detainer for a residential dwelling unit, notwithstanding the provisions of § 8.01-129, an appeal bond shall be posted by the defendant with payment into the general district court in the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due, as contracted for in the rental agreement, and as amended on the unlawful detainer by the court. If such amount is not so paid, any such appeal shall not be perfected as a matter of law. Upon perfection of an appeal, the defendant shall pay the rental amount as contracted for in the rental agreement to the plaintiff on or before the fifth day of each month. If any such rental payment is not so paid, upon written motion of the plaintiff with a copy of such written motion mailed by regular mail to the tenant, the judge of the circuit court shall, without hearing, enter judgment for the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of that date, subtracting any payments made by such tenant as reflected in the court accounts and on a written affidavit submitted by the plaintiff, plaintiff's managing agent, or plaintiff's attorney with a copy of such affidavit mailed by regular mail to the tenant, and an order of possession without further hearings or proceedings in such court. Any funds held in a court account shall be released to the plaintiff without further hearing or proceeding of the court unless the defendant has filed a motion to retain some or all of such funds and the court, after a hearing, enters an order finding that the defendant is likely to succeed on the merits of a counterclaim alleging money damages against the plaintiff, in which case funds shall be held by order of such court.

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

E. In addition to the foregoing, any party applying for appeal shall, within 30 days from the date of the judgment, pay to the clerk of the court from which the appeal is taken the amount of the writ tax of the court to which the appeal is taken and costs as required by subdivision A 13 of § 17.1-275, including all fees for service of process of the notice of appeal in the circuit court pursuant to § 16.1-112.

1956, c. 555; 1972, c. 585; 1978, c. 501; 1992, c. 565; 1993, c. 970; 1998, c. 266; 2004, c. 366; 2006, c. 116; 2007, c. 869; 2008, c. 706; 2010, c. 267; 2011, c. 58; 2017, c. 657; 2019, c. 785; 2021, Sp. Sess. I, c. 199.

§ 16.1-108. Deposit of money in lieu of bond.

In lieu of giving bond with surety as provided in this article, any party appealing from the judgment or order of the court may deposit with the judge or clerk thereof, who shall issue his official receipt therefor, such sum of money as the judge or clerk may estimate to be sufficient to discharge any judgment or order which may be entered by the court of record on the trial of the appeal to secure the appeal bond. The money so deposited shall be transmitted in cash, by check of the court, surety bond, or bank check, or by draft from the escrow account of the appealing party's attorney to the clerk of the court to which the appeal is taken, who shall likewise issue his official receipt therefor.

1956, c. 555; 1975, c. 227; 1988, c. 698; 2007, c. 131.

§ 16.1-109. Appellate court may require new or additional security.

A. The court to which the appeal is taken may on motion for good cause shown, after reasonable notice to the appellant, require the appellant to give new or additional security, and if such security be not given within the time prescribed by the appellate court the appeal shall be dismissed with costs, and the judgment or order of the court from which the appeal was taken shall remain in effect and the appellate court shall award execution thereon, with costs, against the appellant and his surety.

B. When a bond or other security is required by law to be posted or given in connection with an appeal or removal from a district court, and there is either (i) a defect in such bond or other security as a result of an error of the district court, or (ii) the district court erroneously failed to require the bond or other security, and the defect or failure is discovered prior to sending the case to the circuit court, the district court shall order that the appellant or applicant for removal cure such defect or failure within a period not longer than the initial period of time for posting the bond or giving the security. If the error or failure is discovered after the case has been sent to the circuit court, the circuit court shall return the case to the district court for the district court to order the appellant or applicant for removal to cure the defect or post the required bond or give the required security within a period of time not longer than the initial

period of time for posting the bond or giving the security for removal. Failure to comply with such order shall result in the disallowance of the appeal or denial of the application for removal.

1956, c. 555; 2007, c. 464.

§ 16.1-110. Bankruptcy of appellant does not release surety.

No surety in any appeal bond given by the appellant shall be released by the appellant's being adjudicated a bankrupt at any time subsequent to the judgment rendered in the court not of record, but such surety shall be entitled to make any defense on the trial of the appeal that the appellant could have made, except the defense of bankruptcy.

1956, c. 555.

§ 16.1-111. Court to which appeal sent.

The party taking an appeal may, when there is more than one court having jurisdiction, direct to which of such courts the appeal shall be sent for trial, but in the absence of such directions the judge or clerk shall send the same to any court having jurisdiction.

1956, c. 555.

§ 16.1-112. All papers transmitted to appellate court; further proceedings.

The judge or clerk of any court from which an appeal is taken under this article shall promptly transmit to the clerk of the appellate court the case papers, which shall include the original warrant or warrants or other notices or pleadings with the judgment endorsed thereon, together with all pleadings, exhibits, and other papers filed in the trial of the case. The required bond, and, if applicable, the money deposited to secure such bond and the writ tax and costs paid pursuant to § 16.1-107 shall also be submitted, along with the fees for service of process of the notice of appeal in the circuit court. Upon receipt of the foregoing by the clerk of the appellate court, the case shall then be docketed, except that an appeal from an order of protection issued pursuant to § 19.2-152.10 shall be assigned a case number within two business days upon receipt of such appeal.

When such case has been docketed, the clerk of such appellate court shall by writing to be served, as provided in §§ 8.01-288, 8.01-293, 8.01-296, and 8.01-325, or by certified mail, with certified delivery receipt requested, notify the appellee, or by regular mail to his attorney, that such an appeal has been docketed in his office, provided that upon affidavit by the appellant or his agent in conformity with § 8.01-316 being filed with the clerk, the clerk shall post such notice at the front door of his courtroom and shall mail a copy thereof to the appellee at his last known address or place of abode or to his attorney, and he shall file a certificate of such posting and mailing with the papers in the case. No such appeal shall be heard unless it appears that the appellee or his attorney has had such notice, or that such certificate has been filed, 10 days before the date fixed for trial, or has in person or by attorney waived such notice.

If a party files an appeal of a district court order of protection entered pursuant to § 19.2-152.10, such notice of appeal shall be on a form prescribed by the Office of the Executive Secretary. The district court clerk shall contact the appellate court to determine whether the hearing on the appeal shall be

set by the appellate court on (i) a date scheduled by the district court clerk with the court, (ii) on the next docket call date, or (iii) a date set for district court appeals. Once the hearing date is set and the appeal documents have been transmitted, the appellate court shall have the parties served with notice of the appeal stating the date and time of the hearing in accordance with subdivision 1 of § 8.01-296. No such hearing on the appeal shall be heard in the appellate court unless the appellee has been so served with such notice or notice has been waived by the non-moving party.

1956, c. 555; 1958, c. 211; 1972, c. 585; 1984, c. 108; 1988, c. 698; 2004, c. 366; 2016, c. 612; 2018, cc. 32, 134; 2019, c. 718; 2020, c. 905.

§ 16.1-113. How appeals tried.

Every such appeal shall be tried by the court in a summary way, or, if the amount in controversy exceeds fifty dollars, by a jury if either party requires it. All legal evidence produced by either party shall be heard, whether or not it was produced before the court from which the appeal is taken. If judgment is recovered by the appellee, execution shall issue against the principal and his surety, jointly or separately, for the amount of the judgment, including interests and costs, with damages on the aggregate at the rate of ten percent annually, from the date of that judgment until payment, and for the costs of the appeal; and the execution shall be endorsed "No security is to be taken." If the decision is reversed, the party substantially prevailing shall recover his costs and the order or judgment shall be made or given as ought to have been made or given by the judge of the court from which the appeal was taken. When the appeal is from an order or judgment under §§ 16.1-119 through 16.1-121, the court shall enter such judgment respecting the property, the expense of keeping it, and any injury done to it, as may be equitable among the parties.

1956, c. 555; 1980, c. 129; 1984, c. 38; 1988, c. 337.

§ 16.1-114. Repealed.

Repealed by Acts 1983, c. 499.

§ 16.1-114.1. Principles applicable in trial of appeals; defective or irregular warrants or motions.

Actions or proceedings appealed from district courts shall be tried according to the principles of law and equity, and when the same conflict the principles of equity shall prevail. No warrant, motion or other pleading shall be dismissed by reason of a mere defect, irregularity or omission in the proceedings in the district court, or in the form of any such pleading, when the same may be corrected by a proper order of the court of record. In any such case the court of record shall retain the same, with full power to direct all necessary amendments, to enter orders and direct proceedings to correct such defects, irregularities and omissions, to promote substantial justice to all parties, and to bring about a trial of the merits of the controversy. In any case where an appeal is taken by a defendant the circuit court may direct amendments to increase the amount of the claim above the jurisdictional amount set forth in § 16.1-77. This section shall be liberally construed, to the end that justice is not delayed or denied by reason of errors in the pleadings or in the form of the proceedings.

1986, c. 45; 1997, c. 753; 2007, c. 869.

§ 16.1-115. Repealed.

Repealed by Acts 1986, c. 45.

§ 16.1-116. Issuance of executions and abstracts and proceedings by interrogatories after papers returned to circuit court.

When a judgment has been rendered in a civil action in a general district court and the papers in the action have been returned to the clerk of the circuit court for filing and preserving, executions upon and abstracts of the judgment may be issued by the clerk of such circuit court within the periods permitted under § 8.01-251, provided that such judgment has been duly entered in the judgment lien docket book of such court. However, for a period of two years from the date of any such judgment, the judge or clerk of the general district court may also issue executions upon and abstracts of the judgment. In addition, proceedings by interrogatories may be had in the circuit court as if the judgment had been rendered by that court.

1956, c. 555; 1962, c. 444; 1983, c. 499.

§ 16.1-117. When papers in civil cases in certain municipal courts may be destroyed.

The clerk of any municipal court in which papers are filed and preserved under § 16.1-69.55 may destroy the files, papers and records connected with any civil case in such court, if:

(1) Such case was dismissed without any adjudication of the merits of the controversy, and the final order entered was one of dismissal and six months have elapsed from the date of such dismissal; or

(2) Judgment was entered in such case but the right to issue an execution or bring a scire facias or an action on such judgment is barred by § 8.01-251; and

(3) The destruction of such papers is authorized and directed by an order of the judge of the court in which they are filed and preserved, which order may refer to such papers by any one or more of the above classifications, or to any group or kind of cases embraced therein, without express reference to any particular case.

1956, c. 555.

§ 16.1-118. When papers in civil cases returned to courts of record may be destroyed.

The clerk of any court of record to whose office papers in civil cases in the district court have been returned for indexing and preserving under § 16.1-69.55 may destroy the files, papers and records connected with any such civil case, if:

(1) Such case was dismissed without any adjudication of the merits of the controversy, and the final order entered was one of dismissal and one year has elapsed from the date of such dismissal; or

(2) Judgment was entered in such case but twenty years have elapsed since entry of such judgment and a motion to extend the period for enforcement of judgment has not been brought prior to the expiration of twenty years from the date such judgment was entered; or

(3) No service of the warrant or motion or other process or summons was had on any defendant and one year has elapsed from the date of such process or summons; and

(4) The destruction of such papers is authorized and directed by an order of the judge of the court in which they are preserved, which order may refer to such papers by any one or more of the above classifications, or to any group or kind of cases embraced therein, without express reference to any particular case.

1956, c. 555; 1962, c. 444; 1972, c. 491; 1977, c. 169; 1982, c. 153.

§ 16.1-118.1. Destruction of papers in civil cases in certain district courts.

In Henrico County or Montgomery County, the clerk of any district court in which papers are filed and preserved under § 16.1-69.55 may destroy the files, papers and records connected with any civil case in such court, if:

(1) Such case was dismissed without any adjudication of the merits of the controversy, and the final order entered was one of dismissal and one year has elapsed from the date of such dismissal; or

(2) Judgment was entered in such case but the right to issue an execution or bring a motion to extend the period for enforcing a judgment or an action on such judgment is barred by § 8.01-251; or

(3) No service of the warrant or motion or other process or summons was had on any defendant and one year has elapsed from the date of such process or summons; and

(4) The destruction of such papers is authorized and directed by an order of the judge of the court in which they are preserved, which order may refer to such papers by any one or more of the above classifications, or to any group or kind of cases embraced therein, without express reference to any particular case; and

(5) The audit has been made for the period to which the files, papers and records are applicable.

1966, c. 404; 1973, c. 143; 1977, c. 169; 1982, c. 153; 2007, c. 813.

Article 4 - TRYING TITLE TO PROPERTY LEVIED ON UNDER DISTRESS OR EXECUTION

§ 16.1-119. Proceedings to try title to property levied on under distress or execution.

When an execution on a judgment of a general district court, or a warrant of distress, is levied on property, or when a lien is acquired on money or other personal estate by virtue of § 8.01-501 and some person other than the party against whom the process issued claims such property, money or other personal estate, or some part thereof, either the claimant, the officer having such process, or the party who had the same issued may apply to the general district court of the county or city wherein the property, money or other personal estate may be to try the claim of the party so claiming the same or some part thereof, provided that the property, money or other personal estate does not exceed the maximum jurisdictional limit of the court as provided in § 16.1-77 (1).

1956, c. 555; 1978, c. 42; 1986, c. 27.

§ 16.1-120. Summons in such case.

If the party making such application shall make and file an affidavit that to the best of his belief such property, money or other personal estate so claimed by such third party is not of greater value than the maximum jurisdictional limits of the court as provided by § 16.1-77 (1), the judge or clerk of the court shall issue a summons directed to the sheriff of his county or city, as the case may be, requiring him to summon both the creditor and the debtor to appear and show cause why such property, money or other personal estate, or any part thereof, should not be discharged from levy or lien of such execution or distress warrant. A copy of such summons shall be served upon the claimant of the property, money or other personal estate, unless the summons is sued out at his instance. The summons shall be made returnable not less than five days after date of its issuance, and if an earlier day shall have been fixed for the sale of the property, or for the return of any process subjecting such money or other personal estate to a final disposition, the judge shall make and endorse on the summons an order requiring the postponement of the sale, or the hearing to be had on such process, until after the return day of the summons.

1956, c. 555; 1978, c. 42; 1983, c. 616.

§ 16.1-121. Order after hearing.

After hearing the parties or such of them as may attend after being summoned, and such witnesses as may be introduced by either party, the judge shall order the officer, or the possessor of any money or other personal estate, to deliver the same to the claimant, if he be of opinion that the same belongs to the claimant; but if he be of opinion that the property, money or other personal estate, or any part thereof, belongs to the person against whom the execution or warrant of distress issued, he shall order the officer who levied on the same to sell the property so liable, to satisfy the execution or warrant of distress; or when there is money or other personal estate in the possession of a bailee or garnishee, he shall order the bailee or garnishee, as the case may be, to make delivery to the execution creditor of all such money or other personal estate so found to belong to the execution debtor, or so much thereof as may be necessary to satisfy the execution; and he may give such judgment respecting the property, the expense of keeping it, any injury done by it, and for the costs, as may be just and equitable among the parties.

1956, c. 555.

§ 16.1-122. Appeal.

If the property or money claimed in any such proceeding is more than $50 in value, an appeal of right may be had to the judgment or order of the court as provided in § 16.1-106.

1956, c. 555; 1978, c. 42; 1986, c. 25; 1998, cc. 482, 495; 2002, c. 645; 2007, c. 869.

Article 5 - SMALL CLAIMS COURT

§ 16.1-122.1. Small claims court; designated.

On or before July 1, 1999, each general district court shall establish, using existing facilities, a small claims division to be designated a small claims court.

Such courts shall not have jurisdiction over suits against the Commonwealth under the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) or suits against any officer or employee of the Commonwealth for claims arising out of the performance of their official duties or responsibilities.

1988, c. 799; 1989, c. 451; 1990, c. 564; 1994, c. 576; 1995, c. 589; 1998, cc. 656, 779.

§ 16.1-122.2. Jurisdiction.

Notwithstanding any provision of law to the contrary, the small claims court shall have jurisdiction, concurrent with that of the general district court, over the civil action specified in § 16.1-77 (1) when the amount claimed does not exceed $5,000, exclusive of interest.

1988, c. 799; 2002, c. 704; 2006, c. 141.

§ 16.1-122.3. Actions; how commenced; notice; continuances; pleadings.

A. Actions in the small claims court shall be commenced by the filing of a small claims civil warrant by a plaintiff.

B. At the time of filing a small claims civil warrant, the plaintiff shall pay to the clerk a required fee, which will be taxed as costs in the case. The plaintiff may be afforded the opportunity to receive preprinted information promulgated by the Committee on District Courts explaining the small claims court, including but not limited to information on case preparation, courtroom procedures, methods of collection, removal rights and appeals. The plaintiff shall select a time for the hearing which shall be held at least five days after service of the warrant. Such time shall be subject to concurrence by the clerk's office. The chief judge may limit the number of cases any one person may set for trial on any one date.

C. Upon the filing of the small claims civil warrant in small claims court, the court shall cause notice of process to be served upon the defendant. Notice of process shall consist of a copy of the warrant and shall be served by the method used in general district court. If applicable, the defendant shall be served with a copy of the preprinted information identified in subsection B of this section attached to the copy of the civil warrant.

D. All forms required by this article shall be prescribed by the Supreme Court of Virginia.

E. The trial shall be conducted on the first return date. However, by consent of all parties or upon order of the court, the time for trial may be changed from the time set for the first return. A continuance shall be granted to either the plaintiff or defendant only upon good cause shown.

F. There shall be no pleadings in small claims court actions other than the warrant and answer, grounds of defense and counterclaims not to exceed $5,000.

1988, c. 799; 1990, c. 564; 2002, c. 704; 2006, c. 141.

§ 16.1-122.4. Representation and removal; rights of parties.

A. All parties shall be represented by themselves in actions before the small claims court except as follows:

1. A corporate or partnership plaintiff or defendant may be represented by an owner, a general partner, an officer or an employee of that corporation or partnership who shall have all the rights and privileges given an individual to represent, plead and try a case without an attorney. An attorney may serve in this capacity if he is appearing pro se, but he may not serve in a representative capacity.

2. A plaintiff or defendant who, in the judge's opinion, is unable to understand or participate on his own behalf in the hearing may be represented by a friend or relative if the representative is familiar with the facts of the case and is not an attorney.

B. A defendant shall have the right to remove the case to the general district court at any point preceding the handing down of the decision by the judge and may be represented by an attorney for that purpose.

1988, c. 799; 1997, c. 243; 2001, c. 74.

§ 16.1-122.5. Informal hearings; rules of evidence suspended.

In trials before the small claims court, witnesses shall be sworn. The general district court judge shall conduct the trial in an informal manner so as to do substantial justice between the parties. The judge shall have the discretion to admit all evidence which may be of probative value although not in accordance with formal rules of practice, procedure, pleading or evidence, except that privileged communications shall not be admissible. The object of such trials shall be to determine the rights of the litigants on the merits and to dispense expeditious justice between the parties.

1988, c. 799.

§ 16.1-122.6. Judgment and collection.

The small claims court shall follow the procedures of the general district court in judgment and collection.

1988, c. 799.

§ 16.1-122.7. Appeals.

Appeals from the small claims court shall be as in other cases from the general district court.

1988, c. 799.

Chapter 7 - Jurisdiction and Procedure in Criminal Matters

Article 1 - JURISDICTION IN CRIMINAL MATTERS

§ 16.1-123. Repealed.

Repealed by Acts 1984, c. 506.

§ 16.1-123.1. Criminal and traffic jurisdiction of general district courts.

1. Each general district court shall have, within the county, including the towns within such county, or city for which it is established, exclusive original jurisdiction for the trial of:

a. All offenses against the ordinances, laws and bylaws of such county, including the towns within such county, or city or of any service district within such county or city, except a city ordinance enacted pursuant to §§ 18.2-372 through 18.2-391.1. All offenses against the ordinances of a service district shall be prosecuted in the name of such service district;

b. All other misdemeanors and traffic infractions arising in such county, including the towns in such county, or city.

2. Each general district court which is established within a city shall also have:

a. Concurrent jurisdiction with the circuit court of such city for all violations of state revenue and election laws; and

b. Exclusive original jurisdiction, except as otherwise provided by general law or the city charter, within the area extending for one mile beyond the corporate limits thereof, for the trial of all offenses against the ordinances, laws and bylaws of the city.

3. If a city lying within a county has no general district court provided by city charter or under general law, then the general district court of the county within which such city lies shall have the same jurisdiction in such city as a general district court established for a city would have.

4. Each general district court shall have such other jurisdiction, exclusive or concurrent, as may be conferred on such court by general law or by provisions of the charter of the city for which the court was established.

5. Notwithstanding the provisions of subsection C of § 19.2-244, any county general district court authorized by § 16.1-69.35:01 to be established in a city shall have exclusive original jurisdiction for the trial of all misdemeanors committed within or upon the general district court courtroom.

6. Upon certification by the general district court of any felony charge and ancillary misdemeanor charge or when an appeal of a conviction of an offense in general district court is noted, jurisdiction as to such charges shall vest in the circuit court, unless such case is reopened pursuant to § 16.1-133.1; a final judgment, order, or decree is modified, vacated, or suspended pursuant to Supreme Court of Virginia Rule 1:1; or the appeal has been withdrawn in the general district court within 10 days pursuant to § 16.1-133.

7. Nothing herein shall affect the jurisdiction conferred on the juvenile and domestic relations district court by Chapter 11 (§ 16.1-226 et seq.).

1984, c. 506; 2019, c. 240; 2021, Sp. Sess. I, c. 187.

§§ 16.1-124, 16.1-125. Repealed.

Repealed by Acts 1984, c. 506.

§ 16.1-126. Certain courts of record may try misdemeanors; procedure.

Notwithstanding the provisions of this chapter, the circuit court of any county or city having criminal jurisdiction, shall have jurisdiction to try any person for any misdemeanor for which a presentment or

indictment is brought in or for which an information is filed; or such court may certify the presentment, indictment or information for trial to the court not of record which would otherwise have jurisdiction of the offense; in which event the presentment, indictment or information shall be in lieu of any warrant, petition or other pleading which might otherwise be required by law.

1956, c. 555.

§ 16.1-127. Courts may conduct preliminary examinations.

In addition to the power and authority conferred by this chapter on courts not of record having criminal jurisdiction, each such court shall have power to conduct preliminary examinations of persons charged with crime within its jurisdiction in the manner prescribed in Chapter 7 (§ 19.2-71 et seq.) of Title 19.2.

1956, c. 555; 1960, c. 362.

§ 16.1-128. Exception when jurisdiction in State Corporation Commission.

Nothing in this chapter shall be held to confer upon courts not of record any jurisdiction or power over offenses of which jurisdiction is specifically vested in the State Corporation Commission or in courts of record under the corporation laws of the Commonwealth.

1956, c. 555.

Article 2 - PROCEDURE IN CRIMINAL CASES

§ 16.1-129. Offenses tried on warrants, or as provided in Chapter 7 of Title 19.2.

Every offense of which a court not of record is given jurisdiction under this title may be tried upon a warrant; or the judge of such court may, in his discretion, make an examination into the offense and proceed according to the provisions of Chapter 7 (§ 19.2-71 et seq.) of Title 19.2. The word warrant as used in this chapter shall be construed to include a summons or notice requiring a person to appear and answer a charge of having violated any statute, ordinance, or any regulation having the force and effect of law.

1956, c. 555; 1960, c. 373.

§ 16.1-129.1. Repealed.

Repealed by Acts 1990, c. 75.

§ 16.1-129.2. Procedure when warrant defective.

Upon the trial of a warrant, the court may, upon its own motion or upon the request either of the attorney for the prosecution or for the accused, amend the form of the warrant in any respect in which it appears to be defective. But when the warrant is so defective in form that it does not substantially appear from the same what is the offense with which the accused is charged, or even when it is not so seriously defective, the judge of the court having examined on oath the original complainant, if there be one, or if he sees good reason to believe that an offense has been committed, then without examination of witnesses, may issue under his own hand his warrant reciting the offense and requiring the defendant in the original warrant to be arrested and brought before him. Upon the arrest of the

defendant on the new warrant and his production or appearance in court the trial shall proceed upon the new warrant. When there is an amendment of the original warrant the trial shall proceed on the amended warrant. But whether the warrant is amended or a new warrant is issued, the court before proceeding to trial on the same may grant a continuance to the prosecution or to the defendant upon such terms as to costs as may be proper under the circumstances of the case; provided, however, that if the warrant be amended or if a new warrant be issued after any evidence has been heard, the accused shall be entitled to a continuance as a matter of right.

When a warrant is amended or a new warrant is issued the costs already accrued shall be taxed against the defendant, if he is ultimately convicted, as a part of the costs arising under the new or amended warrant.

1968, c. 495.

§ 16.1-129.3. Repealed.

Repealed by Acts 1974, c. 481.

§ 16.1-130. Repealed.

Repealed by Acts 1983, c. 499.

§ 16.1-131. Subpoenas duces tecum and recognizances of witnesses; applicable provisions.

The provisions of § 16.1-90 with respect to recognizances for witnesses upon the continuation of any case, shall be applicable to proceedings of a criminal nature as well as to civil actions. The provisions of Rule 3A:12 of the Rules of the Supreme Court shall apply to the issuance of a subpoena duces tecum and punishment for failure to comply.

1956, c. 555; 1986, c. 160.

§ 16.1-131.1. Procedure when constitutionality of a statute is challenged in a court not of record.

In any criminal or traffic case in a court not of record, if the court rules that a statute or local ordinance is unconstitutional, it shall upon motion of the Commonwealth, or the locality if a local ordinance is the subject of the ruling, stay the proceedings and issue a written statement of its findings of law and relevant facts, if any, in support of its ruling and shall transmit the case, together with all papers, documents, and evidence connected therewith, to the circuit court for a determination of constitutionality. Either party may file a brief with the circuit court. Either party may request oral argument before the circuit court. The circuit court shall give the issue priority on its docket. If the circuit court rules that the statute or local ordinance is unconstitutional, the Commonwealth or the locality may appeal such interlocutory order to the Court of Appeals and thereafter to the Supreme Court; however, if the circuit court rules that the statute or local ordinance is constitutional, the circuit court shall remand the case to the court not of record for trial consistent with the ruling of the circuit court.

2006, cc. 571, 876; 2010, cc. 303, 609.

§ 16.1-132. Right of appeal.

Any person convicted in a district court of an offense not felonious shall have the right, at any time within ten days from such conviction, and whether or not such conviction was upon a plea of guilty, to appeal to the circuit court. There shall also be an appeal of right from any order or judgment of a district court forfeiting any recognizance or revoking any suspension of sentence.

1956, c. 555.

§ 16.1-133. Withdrawal of appeal.

Notwithstanding the provisions of § 16.1-135, any person convicted in a general district court, a juvenile and domestic relations district court, or a court of limited jurisdiction of an offense not felonious may, at any time before the appeal is heard, withdraw an appeal which has been noted, pay the fine and costs to such court, and serve any sentence which has been imposed.

A person withdrawing an appeal shall give written notice of withdrawal to the court and counsel for the prosecution prior to the hearing date of the appeal. If the appeal is withdrawn more than ten days after conviction, the circuit court shall forthwith enter an order affirming the judgment of the lower court and the clerk shall tax the costs as provided by statute. Fines and costs shall be collected by the circuit court, and all papers shall be retained in the circuit court clerk's office.

Where the withdrawal is within ten days after conviction, no additional costs shall be charged, and the judgment of the lower court shall be imposed without further action of the circuit court.

1956, c. 555; 1973, c. 18; 1974, c. 228; 1979, c. 536; 1982, c. 366; 1983, c. 105; 1990, c. 25.

§ 16.1-133.1. Reopening case after conviction.

Within sixty days from the date of conviction of any person in a general district court or juvenile and domestic relations district court for an offense not felonious, the case may be reopened upon the application of such person and for good cause shown. Such application shall be heard by the judge who presided at the trial in which the conviction was had, but if he be not in office, or be absent from the county or city or is otherwise unavailable to hear the application, it may be heard by his successor or by any other judge or substitute judge of such court. If the case is reopened after the case documents have been filed with the circuit court, the clerk of the circuit court shall return the case documents to the district court in which the case was originally tried.

1973, c. 440; 1975, c. 298; 1983, c. 21.

§ 16.1-134. Appeal by Commonwealth in revenue cases.

In any case involving the violation of a law relating to the state revenue tried in a court not of record under this title, the Commonwealth shall also have the right at any time within ten days from final judgment to appeal to the circuit court.

1956, c. 555.

§ 16.1-135. Bail and recognizance; papers filed with circuit court.

A person who has been convicted of an offense in a district court and who has noted an appeal, either at the time judgment is rendered or subsequent to its entry, shall be given credit for any bond that he

may have posted in the court from which he appeals and shall be treated in accordance with the provisions of Article 1 (§ 19.2-119 et seq.) of Chapter 9 of Title 19.2. Any new bond which may be required for the release of such person pending the appeal shall be given before the judge or the clerk of the district court and treated in accordance with Article 1 of Chapter 9 of Title 19.2; however, if the judge or clerk is not available to take the bond, the bond may be given before a magistrate serving the jurisdiction. Whenever an appeal is taken and the ten-day period prescribed by § 16.1-133 has expired the papers shall be promptly filed with the clerk of the circuit court.

1956, c. 555; 1981, c. 159; 1999, cc. 829, 846; 2008, cc. 551, 691.

§ 16.1-136. How appeal tried.

Any appeal taken under the provisions of this chapter shall be heard de novo in the appellate court and shall be tried without formal pleadings in writing; and, except in the case of an appeal from any order or judgment of a court not of record forfeiting any recognizance or revoking any suspension of sentence, the accused shall be entitled to trial by a jury in the same manner as if he had been indicted for the offense in the circuit court.

1956, c. 555.

§ 16.1-137. Procedure on appeal when warrant defective.

Upon the trial of the warrant on appeal the court may, upon its own motion or upon the request either of the attorney for the prosecution or for the accused, amend the form of the warrant in any respect in which it appears to be defective. But when the warrant is so defective in form that it does not substantially appear from the same what is the offense with which the accused is charged, or even when it is not so seriously defective, the judge of the court having examined on oath the original complainant, if there be one, or if he sees good reason to believe that an offense has been committed, then without examination of witnesses, may issue under his own hand his warrant reciting the offense and requiring the defendant in the original warrant to be arrested and brought before him. Upon the arrest of the defendant on the new warrant and his production or appearance in court the trial shall proceed upon the new warrant. When there is an amendment of the original warrant the trial shall proceed on the amended warrant. But whether the warrant is amended or a new warrant is issued, the court before proceeding to trial on the same may grant a continuance to the prosecution or to the defendant upon such terms as to costs as may be proper under the circumstances of the case; provided, however, that if the warrant be amended or if a new warrant be issued after any evidence has been heard, the accused shall be entitled to a continuance as a matter of right.

When a warrant is amended or a new warrant is issued the costs already accrued shall be taxed against the defendant, if he is ultimately convicted, as a part of the costs arising under the new or amended warrant.

1956, c. 555; 1958, c. 399.

§ 16.1-138. Repealed.

Repealed by Acts 1983, c. 499.

Chapter 8 - JUVENILE AND DOMESTIC RELATIONS COURTS [Repealed]

§§ 16.1-139 through 16.1-217. Repealed.

Repealed by Acts 1977, c. 559.

§§ 16.1-217.1 through 16.1-217.4. Repealed.

Repealed by Acts 1975, c. 341.

Chapter 9 - JUDICIAL CONFERENCE OF VIRGINIA FOR DISTRICT COURTS

§ 16.1-218. Established; active and honorary members.

There is hereby established a Judicial Conference of Virginia for District Courts whose active members shall be the judge of every general district court and juvenile and domestic relations district court of the Commonwealth. The Attorney General of Virginia, the Chairman of the House Committee for Courts of Justice or his designee who shall be a member of the committee, the Chairman of the Senate Committee on the Judiciary or his designees who shall be a member of the committee, the president and secretary of the Virginia State Bar, the president and secretary of the Virginia Bar Association, the president and secretary of the Virginia Trial Lawyers Association, the president and secretary of the Old Dominion Bar Association, the president and secretary of the Virginia Association of Commonwealth's Attorneys, the president and secretary of the Virginia Women Attorneys Association, the president and secretary of the Virginia College of Criminal Defense Attorneys, and the president and secretary of the Virginia Association of Defense Attorneys shall be honorary members of the Conference without voting privilege.

1962, c. 622; 1970, c. 559; 1972, c. 518; 1975, c. 334; 1980, c. 447; 1981, c. 231; 1989, c. 597; 1990, c. 249; 2001, c. 229; 2008, c. 115.

§ 16.1-219. President; election of executive committee; assistance by Executive Secretary of Supreme Court.

The Chief Justice of the Supreme Court shall be president of the Conference. The Conference shall elect from the judges of courts not of record seven judges who shall act as an executive committee. The Chief Justice shall be chairman of the executive committee, but he may designate the Executive Secretary of the Supreme Court to preside at meetings of the executive committee and the Conference and may assign him administrative duties relating to the committee and Conference.

1962, c. 622; 1970, c. 559.

§ 16.1-220. Meetings; active members must give notice of inability to attend; special session concerning motor vehicle and traffic laws.

The Conference shall meet at least once in each calendar year at the call of the president and at such other times as may be designated by him or by the executive committee for the purpose of discussing and considering means and methods of improving the administration of justice in this Commonwealth. If any active member shall for any cause be unable to attend, he shall promptly notify the president.

Unless excused from attendance, it shall be the duty of each active member to attend and remain throughout the proceedings of the Conference.

In conjunction with said meetings and as a part thereof, the Conference shall conduct a session at least once each year devoted to the consideration of and instruction on the Commonwealth's motor vehicle and traffic laws and their proper administration. Unless excused from attendance, it shall be the duty of each active member whose jurisdiction includes cases involving violations of such laws to attend this session. The Executive Secretary of the Supreme Court shall be responsible for preparing the program for this session, and the office of the Attorney General, Department of State Police and Department of Motor Vehicles shall cooperate with him in preparing for this session.

1962, c. 622; 1968, c. 496; 1970, c. 559.

§ 16.1-221. Members to receive actual expenses.

The active members and honorary members shall receive their actual expenses while in attendance at the meetings of the Conference, and of the executive committee.

1962, c. 622; 1964, c. 9.

Chapter 10 - VIRGINIA JUVENILE JUSTICE INFORMATION SYSTEM

§ 16.1-222. Established; powers of Director.

A. There is hereby established within the Department of Juvenile Justice the Virginia Juvenile Justice Information System which shall operate separate and apart from the Central Criminal Records Exchange.

B. The Director of the Department of Juvenile Justice is authorized to employ such personnel, establish such offices, acquire such equipment and use such available equipment as shall be necessary to carry out the purpose of this chapter. He is further authorized to enter into agreements with other state agencies for services to be performed for the Virginia Juvenile Justice Information System by employees of such other agencies.

1976, c. 589; 1989, c. 733.

§ 16.1-223. Receipt, etc., of data; forms for reports; confidentiality.

A. The Virginia Juvenile Justice Information System shall receive, classify and file data reported to it pursuant to § 16.1-224. The Director is authorized to prepare and furnish to all court service personnel automated data processing equipment, which shall be used for making the data submissions.

B. Data stored in the Virginia Juvenile Justice Information System shall be confidential, and information from such data that may be used to identify a juvenile may be released only in accordance with § 16.1-300.

The data submissions may be made available to the Central Criminal Records Exchange or any other automated data processing system, unless the data is identifiable with a particular juvenile. The State

Board of Juvenile Justice shall promulgate regulations governing the security and confidentiality of the data submission.

1976, c. 589; 1978, c. 684; 1988, c. 541; 2001, cc. 203, 215.

§ 16.1-224. Data submissions by court service units.

A. All court service units serving juvenile and domestic relations district courts shall make data submissions to the Virginia Juvenile Justice Information System of any persons referred to an intake officer of a court service unit pursuant to § 16.1-260, except that no data submission shall be required for a juvenile charged with a traffic infraction as defined in § 46.2-100.

B. In the case of a juvenile who is alleged to be delinquent and who is referred to a court service unit pursuant to § 16.1-260, the data submissions required by subsection A of this section shall contain the name, date of birth and, if any, the social security number of the juvenile before the court. The data submissions concerning all other children coming before a juvenile and domestic relations district court, except those charged with traffic infractions, may in accordance with standards adopted by the Department of Juvenile Justice, contain information identifying the child.

C. The court service unit shall make a data submission to the Virginia Juvenile Justice Information System of the final disposition of each case reported to the System. When the court service unit reports a disposition of a case which is other than a finding of guilty, the name and other personal identification of the juvenile shall be deleted from the data submissions required by subsection B of this section and from the report of final disposition required by this subsection.

1976, c. 589; 1978, c. 684; 1988, c. 541.

§ 16.1-225. Penalty for violation of confidentiality of records.

Any person who knowingly and willfully violates the provisions of this chapter which require confidentiality of such records shall be guilty of a Class 2 misdemeanor.

1976, c. 589; 1977, c. 360; 1988, c. 541.

Chapter 11 - JUVENILE AND DOMESTIC RELATIONS DISTRICT COURTS

Article 1 - General Provisions

§ 16.1-226. Short title.

The short title of the statutes embraced in this chapter is "Juvenile and Domestic Relations District Court Law."

Code 1950, § 16.1-139; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1977, c. 559.

§ 16.1-227. Purpose and intent.

This law shall be construed liberally and as remedial in character, and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all proceedings the welfare of the child and the family, the safety of the community and the protection of the rights of victims are the paramount concerns of the Commonwealth and to the end

that these purposes may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.

This law shall be interpreted and construed so as to effectuate the following purposes:

1. To divert from or within the juvenile justice system, to the extent possible, consistent with the protection of the public safety, those children who can be cared for or treated through alternative programs;

2. To provide judicial procedures through which the provisions of this law are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other rights are recognized and enforced;

3. To separate a child from such child's parents, guardian, legal custodian or other person standing in loco parentis only when the child's welfare is endangered or it is in the interest of public safety and then only after consideration of alternatives to out-of-home placement which afford effective protection to the child, his family, and the community; and

4. To protect the community against those acts of its citizens, both juveniles and adults, which are harmful to others and to reduce the incidence of delinquent behavior and to hold offenders accountable for their behavior.

Code 1950, § 16.1-140; 1956, c. 555; 1977, c. 559; 1990, c. 554; 1991, c. 392; 1996, cc. 755, 914.

§ 16.1-228. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the

child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. No child whose parent or other person responsible for his care allows the child to engage in independent activities without adult supervision shall for that reason alone be considered to be an abused or neglected child, provided that (a) such independent activities are appropriate based on the child's age, maturity, and physical and mental abilities and (b) such lack of supervision does not constitute conduct that is so grossly negligent as to endanger the health or safety of the child. Such independent activities include traveling to or from school or nearby locations by bicycle or on foot, playing outdoors, or remaining at home for a reasonable period of time. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

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

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

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

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55.1-2000, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a Tier III offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the federal Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7102 et seq., and in the federal Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child within 30 days of the child's birth to (i) a hospital that provides 24-hour emergency services, (ii) an attended emergency medical services agency that employs emergency medical services personnel, or (iii) a newborn safety device located at and operated by such hospital or emergency medical services agency. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

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

"Adult" means a person 18 years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or that constitutes a part of a common scheme or plan with, a delinquent act that would be a felony if committed by an adult.

"Child," "juvenile," or "minor" means a person who is (i) younger than 18 years of age or (ii) for purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of Title 63.2, younger than 21 years of age and meets the eligibility criteria set forth in § 63.2-919.

"Child in need of services" means (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

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

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success, and (iii) the school system has provided documentation that it has complied with the provisions of § 22.1-258; or

2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or placement authority, remains away from or deserts or abandons his family or lawful custodian on more than one occasion or escapes or remains away without proper authority from a residential care facility in which he has been placed by the court, and (i) such conduct presents a clear and substantial

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

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.2-100.

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

"Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but does not include an act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if committed by a child.

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

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

"Driver's license" means any document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2, or the comparable law of another jurisdiction, authorizing the operation of a motor vehicle upon the highways.

"Family abuse" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

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

who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Fictive kin" means persons who are not related to a child by blood or adoption but have an established relationship with the child or his family.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293, or (v) is living with a relative participating in the Federal-Funded Kinship Guardianship Assistance program set forth in § 63.2-1305 and developed consistent with 42 U.S.C. § 673 or the State-Funded Kinship Guardianship Assistance program set forth in § 63.2-1306.

"Independent living arrangement" means placement of (i) a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency by the local board or licensed child-placing agency or (ii) a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement by the Department of Juvenile Justice, in a living arrangement in which such child or person does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years; (ii) is between the ages of 18 and 21 and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services; or (iii) is a child at least 16 years of age or a person between the ages of 18 and 21 who was committed to the Department of Juvenile Justice immediately prior to placement in an independent living arrangement. "Independent living services" includes counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

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

"Jail" or "other facility designed for the detention of adults" means a local or regional correctional facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding cell

for a child incident to a court hearing or as a temporary lock-up room or ward incident to the transfer of a child to a juvenile facility.

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

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

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

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Qualified individual" means a trained professional or licensed clinician who is not an employee of the local board of social services or licensed child-placing agency that placed the child in a qualified residential treatment program and is not affiliated with any placement setting in which children are placed by such local board of social services or licensed child-placing agency.

"Qualified residential treatment program" means a program that (i) provides 24-hour residential placement services for children in foster care; (ii) has adopted a trauma-informed treatment model that meets the clinical and other needs of children with serious emotional or behavioral disorders, including any clinical or other needs identified through assessments conducted pursuant to clause (viii) of this definition; (iii) employs registered or licensed nursing and other clinical staff who provide care, on site and within the scope of their practice, and are available 24 hours a day, 7 days a week; (iv) conducts outreach with the child's family members, including efforts to maintain connections between the child and his siblings and other family; documents and maintains records of such outreach efforts; and maintains contact information for any known biological family and fictive kin of the child; (v) whenever appropriate and in the best interest of the child, facilitates participation by family members in the child's treatment program before and after discharge and documents the manner in which such participation is facilitated; (vi) provides discharge planning and family-based aftercare support for at least six months after discharge; (vii) is licensed in accordance with 42 U.S.C. § 671(a)(10) and accredited by an organization approved by the federal Secretary of Health and Human Services; and (viii) requires that any child placed in the program receive an assessment within 30 days of such

placement by a qualified individual that (a) assesses the strengths and needs of the child using an age-appropriate, evidence-based, validated, and functional assessment tool approved by the Commissioner of Social Services; (b) identifies whether the needs of the child can be met through placement with a family member or in a foster home or, if not, in a placement setting authorized by 42 U.S.C. § 672(k)(2), including a qualified residential treatment program, that would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (c) establishes a list of short-term and long-term mental and behavioral health goals for the child; and (d) is documented in a written report to be filed with the court prior to any hearing on the child's placement pursuant to § 16.1-281, 16.1-282, 16.1-282.1, or 16.1-282.2.

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

"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.

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

"State Board" means the State Board of Juvenile Justice.

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

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

"Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile 14 years of age or older.

Code 1950, § 16.1-141; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1978, c. 605; 1979, c. 15; 1981, c. 491; 1984, c. 631; 1985, c. 260; 1986, cc. 281, 308; 1987, c. 632; 1988, c. 794; 1990, cc. 704, 769, 842; 1991, c. 534; 1992, cc. 742, 830, 886; 1993, cc. 435, 467, 494; 1994, cc. 859, 865, 949; 1996, cc. 755, 914; 1999, cc. 453, 665, 697, 721; 2002, cc. 810, 818; 2003, cc. 538, 547, 835; 2004, cc. 245, 753; 2006, c. 868; 2008, cc. 475, 483; 2011, cc. 445, 480; 2015, cc. 502, 503; 2016, c. 631; 2017, c. 623; 2018, c. 497; 2019, cc. 282, 688; 2020, cc. 95, 732, 829, 1227, 1246, 1285, 1286; 2021 Sp. Sess. I, cc. 254, 310, 550, 551; 2022, cc. 80, 81, 366, 414, 415; 2023, c. 568.

§ 16.1-229. This chapter controlling in event of conflict.

Whenever any specific provision of this chapter differs from or is in conflict with any provision or requirement of any other chapters of this title relating to the same or a similar subject, then such specific provision shall be controlling with respect to such subject or requirement.

Code 1950, § 16.1-142; 1956, c. 555; 1977, c. 559.

§ 16.1-229.1. Removal of a child; names and contact information of persons with a legitimate interest.

In any proceeding held pursuant to this chapter in which a child is removed from his home, the court may order the parents or guardians of such child to provide the names and contact information for all persons with a legitimate interest to the local department of social services.

2019, c. 434.

Article 2 - ORGANIZATION AND PERSONNEL

§ 16.1-230. Organization and operation of juvenile and domestic relations district courts.

The provisions of Chapter 4.1 (§ 16.1-69.1 et seq.) of this title establishing the district court system shall be controlling over the provisions of this chapter with respect to the organization, judges, administration and supervision, personnel, and financing of the juvenile and domestic relations district courts in the event of any conflict between the provisions of Chapter 4.1 and this chapter.

Code 1950, § 16.1-153.1; 1972, c. 708; 1973, c. 546; 1977, c. 559.

§ 16.1-231. Rules of procedure.

The chief judge may adopt and publish rules not in violation of law or in conflict with rules adopted pursuant to Chapter 4.1 (§ 16.1-69.1 et seq.) of this title to regulate the conduct of the clerks and employees of the court, which rules shall be construed and enforced liberally in furtherance of the remedial purposes of this chapter. Insofar as is practicable all such records and rules shall be uniform throughout the Commonwealth.

Code 1950, § 16.1-154; 1956, c. 555; 1968, c. 451; 1972, c. 708; 1973, c. 546; 1975, c. 334; 1977, c. 559.

§ 16.1-232. Attorney for the Commonwealth to prosecute certain cases and represent Commonwealth on appeal.

The attorney for the Commonwealth shall prosecute felony charges before the juvenile court, unless relieved of such responsibility by order of the court. In his discretion, the attorney for the Commonwealth may prosecute misdemeanor charges before such court.

The attorney for the Commonwealth shall represent the Commonwealth in all cases appealed from the juvenile and domestic relations district court to the circuit court.

Code 1950, § 16.1-155; 1956, c. 555; 1977, c. 559; 1980, c. 530; 1991, c. 262.

§ 16.1-233. Department to develop court services; court services units; appointment and removal of employees; salaries.

A. Within funds appropriated for the purpose, it shall be a function of the Department to develop and operate, except as hereinafter provided, probation, parole and other court services for juvenile and domestic relations district courts in order that all children coming within the jurisdiction of such courts

throughout the Commonwealth shall receive the fullest protection of the court. To this end the Director may establish court services units in the Department. The Director shall appoint such employees as he may find to be necessary to carry out properly the responsibilities of the Department relative to the development, supervision and operation of probation, parole and other court services throughout the Commonwealth as set forth in this chapter.

B. The salaries of the persons employed pursuant to this section shall be paid out of funds appropriated for such purpose to the Department of Juvenile Justice. The Director and such employees as he may find necessary to carry out properly the responsibilities of the Department pursuant to subsection A of this section shall have access to all probation offices, other social services and to their records.

C. The State Board shall establish minimum standards for court service staffs and related supportive personnel and promulgate regulations pertaining to their appointment and function to the end that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth. In counties or cities now served by regional juvenile and domestic relations courts or where specialized court service units are not provided, and in any county or city which provided specialized services on June 30, 1973, that requests the development of a court service unit, appointment to positions in such units shall be based on merit as provided in the Virginia Personnel Act (§ 2.2-2900 et seq.).

D. No person shall be assigned to or discharged from the state-operated court service staff of a juvenile and domestic relations district court except as provided in the Virginia Personnel Act (§ 2.2-2900 et seq.). The Director shall have the authority, for good cause, after consulting with the judge or judges of that juvenile and domestic relations district court and after due notice and opportunity to be heard, to order the transfer, demotion or separation of any person from the court service staff subject only to the limitations of the Virginia Personnel Act.

Code 1950, § 16.1-203; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1979, c. 700; 1989, c. 733; 1995, cc. 696, 699; 2001, c. 853; 2003, c. 648.

§ 16.1-234. Duties of Department; provision of quarters, utilities, and office equipment to court service unit.

The Director shall cause the Department to study the conditions existing in the several cities and counties, to confer with the judges of the juvenile and domestic relations district courts, the directors and boards of social services, and other appropriate officials, as the case may be, and to plan, establish and operate unless otherwise provided an adequate and coordinated program of probation, parole and related services to all juvenile and domestic relations district courts in counties or cities heretofore served by regional juvenile and domestic relations courts, and where specialized probation, parole and related court services were not provided as of July 1, 1973, and to counties and cities that request a development of a court service unit with the approval of the governing bodies after consultation with the chief juvenile and domestic relations district court judge.

In each county and city in which there is located an office for a state juvenile and domestic relations district court service unit such jurisdiction shall provide suitable quarters and utilities, including telephone service, for such court service unit staff. Such county or city shall also provide all necessary furniture and furnishings for the efficient operation of the unit. When such court service unit serves counties or cities in addition to the county or city where the office is located, the jurisdiction or jurisdictions so served shall share proportionately, based on the population of the jurisdictions, in the cost of the quarters and utilities, including telephone service and necessary furniture and furnishings. All other office equipment and supplies, including postage, shall be furnished by the Commonwealth and shall be paid out of the appropriation for criminal charges.

In counties and cities that provided specialized court service programs prior to July 1, 1973, which do not request the development of a state-operated court service unit, it shall be the duty of the Department to insure that minimum standards established by the State Board are adhered to, to confer with the judges of the juvenile and domestic relations district court and other appropriate officials as the case may be, and to assist in the continued development and extension of an adequate and coordinated program of court services, probation, parole and detention facilities and other specialized services and facilities to such juvenile and domestic relations district courts.

Code 1950, § 16.1-204; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, c. 641; 1977, c. 559; 1979, c. 700; 2001, c. 853.

§ 16.1-235. How probation, parole and related court services provided.

Probation, parole and related court services shall be provided through the following means:

A. State court service units. -- The Department shall develop and operate probation, parole and related court services in counties or cities heretofore served by regional juvenile and domestic relations district courts and where specialized probation, parole and related court services were not provided as of July 1, 1973, and make such services available to juvenile and domestic relations district courts, as required by this chapter and by regulations established by the Board. All other counties or cities may request the development of a state-operated court service unit with the approval of their governing bodies after consultation with the chief judge of the juvenile and domestic relations district court of such jurisdiction.

B. Local units. -- In counties and cities providing specialized court services as of July 1, 1973, who do not request the development of a state-operated court service unit, the governing body or bodies of the district shall appoint one or more suitable persons as probation and parole officers and related court service personnel in accordance with established qualifications and regulations and shall develop and operate probation, parole, detention and related court services.

The transfer, demotion, or separation of probation officers and related court service personnel appointed pursuant to this subsection shall be under the authority of the governing body or bodies of the district and shall be only for good cause shown, after consulting with the judge or judges of that juvenile

and domestic relations district court, in accordance with the Virginia Personnel Act (§ 2.2-2900 et seq.) and after due notice and opportunity to be heard.

C. A county or city that is providing court services through a state-operated court services unit, with the approval of its governing body after consultation with the chief judge of the juvenile and domestic relations district court of the jurisdiction, may cease providing services through a state-operated court services unit and commence operation as a local unit, subject to all laws, regulations, policies and procedures applicable to a local unit.

Code 1950, § 16.1-205; 1956, c. 555; 1972, cc. 73, 708; 1973, c. 546; 1974, cc. 44, 45, 673; 1977, c. 559; 2001, c. 853; 2002, c. 510; 2003, c. 648.

§ 16.1-235.1. Provision of court services; replacement intake officers.

The chief judge may make arrangements for a replacement intake officer from another court service unit to ensure the capability of a prompt response in matters under § 16.1-255 or 16.1-260 during hours the court is closed. The replacement intake officer shall have all the authority and power of an intake officer of that district when authorized in writing by the appointing authority and by the chief judge of that district.

2002, c. 700; 2012, cc. 164, 456.

§ 16.1-236. Supervisory officers.

In any court where more than one probation or parole officer or other court services staff has been appointed under the provisions of this law, one or more probation or parole officers may be designated to serve in a supervisory position, other than court services unit director, by the Director, if it is a state-operated court services unit, or by the local governing body, if it is a locally operated court services unit.

The transfer, demotion, or separation of supervisory officers, other than court services unit directors, of state court service units shall be under the authority of the Director and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court, and in accordance with the Virginia Personnel Act (§ 2.2-2900 et seq.). The transfer, demotion or separation of supervisory officers of local court service units shall be under the authority of the local governing body and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court and after due notice and opportunity to be heard.

Code 1950, § 16.1-207; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, c. 673; 1977, c. 559; 2001, c. 853; 2003, c. 648.

§ 16.1-236.1. Court services unit directors.

A. State-operated court services units. A court services unit director shall be designated for each state-operated court services unit. The judge or judges of the juvenile and domestic relations district court shall, from a list of eligible persons submitted by the Director appoint one court services unit director for the state-operated court services unit serving that district court. The list of eligible persons shall be

developed in accordance with state personnel laws and regulations, and Department policies and procedures.

If any list of eligible persons submitted by the Director is unsatisfactory to the judge or judges, the judge or judges may request the Director to submit a new list containing the names of additional eligible persons. Upon such request by the judge or judges, the Director shall develop and submit a new list of eligible persons in accordance with state personnel laws and regulations, and Department policies and procedures.

The transfer, demotion, or separation of a court services unit director, appointed pursuant to this subsection shall be under the authority of the Director and shall be only for good cause shown, after consulting with the judge or judges of that juvenile and domestic relations district court, and in accordance with the Virginia Personnel Act (§ 2.2-2900 et seq.).

B. Locally operated court services units. A court services unit director shall be designated for each locally operated court services unit. The judge or judges of the juvenile and domestic relations district court shall, from a list of eligible persons submitted by the governing body or bodies of the district, appoint one court services unit director for the locally operated court services unit serving that district court. The list of eligible persons shall be in accordance with locally established qualifications that are consistent with state personnel laws and regulations, and Department policies and procedures.

If any list of eligible persons submitted by the governing body or bodies of the district is unsatisfactory to the judge or judges, the judge or judges may request the governing body or bodies to submit a new list containing the names of additional eligible persons. Upon such request by the judge or judges, the governing body or bodies shall develop and submit a new list of eligible persons in accordance with locally established qualifications that are consistent with state personnel laws and regulations, and Department policies and procedures.

The transfer, demotion, or separation of a court services unit director appointed pursuant to this subsection shall be under the authority of the local governing body or bodies and shall be only for good cause shown after consulting with the judge or judges of that juvenile and domestic relations district court and in accordance with the Virginia Personnel Act (§ 2.2-2900 et seq.).

2003, c. 648.

§ 16.1-237. Powers, duties and functions of probation and parole officers.

In addition to any other powers and duties imposed by this law, a probation or parole officer appointed hereunder shall:

A. Investigate all cases referred to him by the judge or any person designated so to do, and shall render reports of such investigation as required;

B. Supervise persons placed under his supervision and shall keep informed concerning the conduct and condition of every person under his supervision by visiting, requiring reports and in other ways, and shall report thereon as required;

C. Under the general supervision of the director of the court service unit, investigate complaints and accept for informal supervision cases wherein such handling would best serve the interests of all concerned;

D. Use all suitable methods not inconsistent with conditions imposed by the court to aid and encourage persons on probation or parole and to bring about improvement in their conduct and condition;

E. Furnish to each person placed on probation or parole a written statement of the conditions of his probation or parole and instruct him regarding the same;

F. Keep records of his work including photographs and perform such other duties as the judge or other person designated by the judge or the Director shall require;

G. Have the authority to administer oaths and take acknowledgements for the purposes of §§ 16.1-259 and 16.1-260 to facilitate the processes of intake and petition;

H. Have the powers of arrest of a police officer and the power to carry a concealed weapon when specifically so authorized by the judge; and

I. Determine by reviewing the Department of Forensic Science DNA data bank sample tracking system upon intake and again prior to discharge whether a blood, saliva, or tissue sample is stored in the DNA data bank for each offender required to submit a sample pursuant to § 16.1-299.1 and, if an offender's sample is not stored in the data bank, require the offender to submit a sample for DNA analysis.

Code 1950, § 16.1-208; 1956, c. 555; 1964, c. 516; 1972, c. 708; 1973, c. 546; 1974, c. 464; 1977, c. 559; 2001, c. 853; 2007, c. 528; 2009, c. 726; 2022, cc. 41, 42.

§ 16.1-238. Compensation of probation officers, court service staff members and related court service personnel; reimbursement; traveling and other expenses.

The compensation of probation officers and other court service staff members appointed in accordance with subsection B of § 16.1-235 shall be fixed by the governing body of the city or county in which they serve. They shall be paid out of the county or city treasury. One-half of such compensation shall be reimbursed to any city or county from funds appropriated to the Department. Any funds from the Department of Criminal Justice Services or from other public fund sources outside of the provisions of this law which are used in compensating such personnel shall not be considered state funds.

Compensation of all other probation officers and related court service personnel appointed in accordance with subsection A of § 16.1-235 shall be fixed in accordance with Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2. Personnel transferred from local and regional court staffs shall suffer no reduction in pay and shall transfer into the state program all accrued leave and other benefits allowable under Chapter 29 of Title 2.2. Probation officers and related court service personnel appointed in accordance with subsection A of § 16.1-235 shall be paid necessary traveling and other expenses incurred in the discharge of their duties.

The salary and expenses provided for personnel appointed in accordance with subsection A of § 16.1-235 shall be paid by the Commonwealth, and no part shall be paid by or chargeable to any county or city. The governing body of any county or city, however, may add to the compensation of such personnel such an amount as the governing body may appropriate not to exceed 50 percent of the amount paid by the Commonwealth. No such additional amount paid by a local governing body shall be chargeable to the Department of Juvenile Justice nor shall it remove or supersede any authority, control or supervision of the Department.

Code 1950, § 16.1-206; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1982, c. 636; 1983, c. 358; 1989, c. 733; 2012, cc. 164, 456.

§ 16.1-239. Payment of traveling expenses of court officers; reimbursement.

In counties and cities providing specialized court service programs prior to July 1, 1973, as provided in §§ 16.1-234 and 16.1-235, and under the rules of the Department the traveling expenses incurred by a probation officer, court service officer or other officer of the court when traveling under the order of the judge, shall be paid out of the county or city treasury. One-half of such expenses shall be reimbursed to the city or county by the Department out of funds appropriated for such purposes.

Code 1950, § 16.1-213; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1977, c. 559; 1982, c. 636; 1983, c. 358.

§ 16.1-240. Citizens advisory council.

A. The governing bodies of each county and city served by a court service unit may appoint one or more members to a citizens advisory council, in total not to exceed 15 members; and the chief judge of the juvenile and domestic relations district court may appoint one or more members to the advisory council, in total not to exceed five members. The duties of the council shall be as follows:

1. To advise and cooperate with the court upon all matters affecting the working of this law and other laws relating to children, their care and protection and to domestic relations;

2. To consult and confer with the court and director of the court service unit from time to time relative to the development and extension of the court service program;

3. To encourage the member selected by the council to serve on the central advisory council to visit, as often as the member conveniently can, institutions and associations receiving children under this law, and to report to the court from time to time and at least annually in its report made pursuant to subdivision 5 the conditions and surroundings of the children received by or in charge of any such persons, institutions or associations;

4. To make themselves familiar with the work of the court under this law; and

5. To make an annual report to the court and the participating governing bodies on the work of the council.

B. If the governing body does not exercise its option to appoint a citizens advisory council pursuant to subsection A, the judge of the juvenile and domestic relations district court may appoint an advisory

board of citizens, not to exceed 15 members, who shall perform the same duties as provided in this section.

Code 1950, § 16.1-157; 1956, c. 555; 1968, c. 435; 1977, c. 559; 1989, c. 733; 2012, cc. 164, 456.

Article 3 - Jurisdiction and Venue

§ 16.1-241. Jurisdiction; consent for abortion.

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

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

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

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

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

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

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

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

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

7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 16 years of age or older

at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 16 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated by court order, either voluntarily or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

A1. Making specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit. For the purposes of this subsection only, when the court has obtained jurisdiction over the case of any child, the court may continue to exercise its jurisdiction until such person reaches 21 years of age, for the purpose of entering findings of fact or amending past orders, to include findings of fact necessary for the person to petition the federal government for status as a special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental illness or judicial certification of eligibility for admission to a training center for persons with intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general district court.

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

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

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

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

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4; or

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

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

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

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

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

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

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

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

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

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

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. [Repealed.]

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to an adoption when the consent to an adoption is executed pursuant to the laws of another state and the laws of that state provide for the execution of consent to an adoption in the court of the Commonwealth.

W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (a) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful and (b) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this

subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent or without notice shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without consent of or notice to an authorized person.

Nothing contained in this subsection shall be construed to authorize a physician to perform an abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult woman.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained or the minor delivers to the physician a court order entered pursuant to this section and the physician or his agent provides such notice as such order may require. However, neither consent nor judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor children.

Y. Petitions involving minors filed pursuant to § 32.1-45.1 relating to obtaining a blood specimen or test results.

Z. Petitions filed pursuant to § 16.1-283.3 for review of voluntary agreements for continuation of services and support for persons who meet the eligibility criteria for the Fostering Futures program set forth in § 63.2-919.

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

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M, or R.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection W shall be guilty of a Class 3 misdemeanor.

Upon certification by the juvenile and domestic relations district court of any felony charge and ancillary misdemeanor charge committed by an adult or when an appeal of a conviction or adjudication of delinquency of an offense in the juvenile and domestic relations district court is noted, jurisdiction as to such charges shall vest in the circuit court, unless such case is reopened pursuant to § 16.1-133.1; a final judgment, order, or decree is modified, vacated, or suspended pursuant to Supreme Court of Virginia Rule 1:1; or the appeal has been withdrawn in the juvenile and domestic relations district court within 10 days pursuant to § 16.1-133.

Code 1950, § 16.1-158; 1956, c. 555; 1960, c. 388; 1968, c. 225; 1970, cc. 232, 600; 1973, c. 440; 1976, cc. 42, 324; 1977, cc. 525, 559; 1978, c. 648; 1979, cc. 597, 605, 628; 1980, cc. 527, 529; 1981,

cc. 454, 475, 488, 491, 501, 502, 510; 1982, c. 46; 1983, c. 280; 1984, cc. 631, 645, 651, 665, 669; 1985, c. 270; 1986, cc. 59, 506; 1987, c. 632; 1988, cc. 797, 906; 1989, cc. 368, 733; 1990, cc. 704, 975; 1991, cc. 511, 715; 1992, cc. 585, 742; 1994, cc. 575, 719, 813, 859, 949; 1995, cc. 7, 665, 772, 826, 852; 1996, cc. 755, 914; 1997, cc. 690, 708; 1998, c. 829; 1999, cc. 697, 721, 1028; 2000, c. 830; 2003, cc. 229, 960, 962; 2004, c. 588; 2005, cc. 716, 839, 890; 2007, cc. 284, 370; 2008, cc. 164, 201; 2010, c. 402; 2012, cc. 424, 476, 507, 637; 2014, c. 653; 2017, c. 623; 2019, cc. 27, 412, 631; 2020, cc. 95, 732, 987, 988; 2021, Sp. Sess. I, cc. 187, 286.

§ 16.1-241.1. Repealed.

Repealed by Acts 2002, c. 305.

§ 16.1-241.2. Proceedings against certain parents.

A. Upon the failure of a parent to comply with the provisions of § 22.1-279.3, the school board may, by petition to the juvenile and domestic relations court, proceed against such parent for willful and unreasonable refusal to participate in efforts to improve the student's behavior as follows:

1. If the court finds that the parent has willfully and unreasonably failed to meet, pursuant to a request of the principal as set forth in subsection D of § 22.1-279.3, to review the school board's standards of student conduct and the parent's responsibility to assist the school in disciplining the student, maintaining order, or ensuring the child's school attendance, and to discuss improvement of the child's behavior, school attendance, or educational progress, it may order the parent to so meet; or

2. If the court finds that the parent has willfully and unreasonably failed to accompany a suspended student to meet with school officials pursuant to subsection F of § 22.1-279.3, or upon the student receiving a second suspension or being expelled, it may order (i) the student or his parent to participate in such programs or such treatment as the court deems appropriate to improve the student's behavior, including, but not limited to, extended day programs and summer school or other education programs and counseling, or (ii) the student or his parent to be subject to such conditions and limitations as the court deems appropriate for the supervision, care, and rehabilitation of the student or his parent; in addition, the court may order the parent to pay a civil penalty not to exceed $500.

The court may use its contempt power to enforce any order entered under this section.

B. The civil penalties established pursuant to this section shall be enforceable in the juvenile and domestic relations court or its successor in interest in which the student's school is located and shall be paid into a fund maintained by the appropriate local governing body to support programs or treatments designed to improve the behavior and school attendance of students as described in subdivision 2 of subsection G of § 22.1-279.3. Upon the failure to pay any civil penalties imposed by this section and § 22.1-279.3, the attorney for the appropriate county, city, or town shall enforce the collection of such civil penalties.

C. For the purposes of this section and § 22.1-279.3, "parent" or "parents" means any parent, guardian, legal custodian, or other person having control or charge of a child.

1994, c. 813; 1995, c. 852; 1996, c. 771; 2004, c. 573.

§ 16.1-241.3. Newborn children; substance abuse.

Upon the filing of a petition alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection B of § 63.2-1509, the court may enter any order authorized pursuant to this chapter which the court deems necessary to protect the health and welfare of the child pending final disposition of the investigation pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2 or other proceedings brought pursuant to this chapter. Such orders may include, but shall not be limited to, an emergency removal order pursuant to § 16.1-251, a preliminary protective order pursuant to § 16.1-253 or an order authorized pursuant to subdivisions A 1 through 4 of § 16.1-278.2. The fact that an order was entered pursuant to this section shall not be admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2, but shall be a final order subject to appeal.

1998, cc. 704, 716; 2002, c. 860; 2012, cc. 504, 640.

§ 16.1-242. Retention of jurisdiction.

When jurisdiction has been obtained by the court in the case of any child, such jurisdiction, which includes the authority to suspend, reduce, modify, or dismiss the disposition of any juvenile adjudication, may be retained by the court until such person becomes 21 years of age, except when the person is in the custody of the Department or when jurisdiction is divested under the provisions of § 16.1-244. In any event, when such person reaches the age of 21 and a prosecution has not been commenced against him, he shall be proceeded against as an adult, even if he was a juvenile when the offense was committed.

Code 1950, § 16.1-159; 1956, c. 555; 1977, c. 559; 1978, c. 740; 1992, c. 509; 2018, c. 656.

§ 16.1-242.1. Retention of jurisdiction; appeals involving children in foster care.

Upon appeal to the circuit court of any case involving a child placed in foster care and in any appeal to the Court of Appeals or Supreme Court of Virginia, the juvenile court shall retain jurisdiction to continue to hear petitions filed pursuant to §§ 16.1-282 and 16.1-282.1. Orders of the juvenile court in such cases shall continue to be reviewed and enforced by the juvenile court until the circuit court, Court of Appeals or Supreme Court rules otherwise.

1998, c. 550.

§ 16.1-243. Venue.

A. Original venue:

1. Cases involving children, other than support or where protective order issued: Proceedings with respect to children under this law, except support proceedings as provided in subdivision 2 or family abuse proceedings as provided in subdivision 3, shall:

a. Delinquency: If delinquency is alleged, be commenced in the city or county where the acts constituting the alleged delinquency occurred or they may, with the written consent of the child and the attorney for the Commonwealth for both jurisdictions, be commenced in the city or county where the child resides;

b. Custody or visitation: In cases involving custody or visitation, be commenced in the court of the city or county which, in order of priority, (i) is the home of the child at the time of the filing of the petition, or had been the home of the child within six months before the filing of the petition and the child is absent from the city or county because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continues to live in the city or county; (ii) has significant connection with the child and in which there is substantial evidence concerning the child's present or future care, protection, training and personal relationships; (iii) is where the child is physically present and the child has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or (iv) it is in the best interest of the child for the court to assume jurisdiction as no other city or county is an appropriate venue under the preceding provisions of this subdivision;

c. Adoption: In parental placement adoption consent hearings pursuant to §§ 16.1-241, 63.2-1233, and 63.2-1237, be commenced in any city or county, provided, however, that diligent efforts shall first be made to commence such hearings (i) in the city or county where the child to be adopted was born, (ii) in the city or county where the birth parent(s) reside, or (iii) in the city or county where the prospective adoptive parent(s) reside. In cases in which a hearing is commenced in a city or county other than one described in clause (i), (ii), or (iii), the petitioner shall certify in writing to the court that diligent efforts to commence a hearing in such city or county have been made but have proven ineffective;

d. Abuse and neglect: In cases involving an allegedly abused or neglected child, be commenced (i) in the city or county where the child resides, (ii) in the city or county where the child is present when the proceedings are commenced, or (iii) in the city or county where the alleged abuse or neglect occurred; and

e. All other cases: In all other proceedings, be commenced in the city or county where the child resides or in the city or county where the child is present when the proceedings are commenced.

2. Support: Proceedings that involve child or spousal support or child and spousal support, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, shall be commenced in the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.

3. Family abuse: Proceedings in which an order of protection is sought as a result of family abuse shall be commenced where (i) either party has his or her principal residence (ii) the abuse occurred or (iii) a protective order was issued if at the time the proceeding is commenced the order is in effect to protect the petitioner or a family or household member of the petitioner.

B. Transfer of venue:

1. Generally: Except in custody, visitation and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court may at any time, on its own motion or a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. However, such transfer may occur in delinquency proceedings only after adjudication, which shall include, for the purposes of this section, a finding of facts sufficient to justify a finding of delinquency.

2. Custody and visitation: In custody and visitation cases, if venue lies in one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of venue. In the consideration of the motion, the best interests of the child shall determine the most appropriate forum.

3. Support: In support proceedings, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, if the respondent resides in a city or county in the Commonwealth and the proceeding is commenced in a court of another city or county, that court may, at any time on its own motion or a motion of a party for good cause shown or by agreement of the parties, transfer the proceeding to the city or county of the respondent's residence for such further action or proceedings as the court receiving the transfer may deem proper. For the purposes of determining venue of cases involving support, the respondent's residence shall include any city or county in which the respondent has resided within the last six months prior to the commencement of the proceeding or in which the respondent is residing at the time that the motion for transfer of venue is made. If venue is transferable to one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of such venue.

When the support proceeding is a companion case to a child custody or visitation proceeding, the provisions governing venue in the proceeding involving the child's custody or visitation shall govern.

4. Subsequent transfers: Any court receiving a transferred proceeding as provided in this section may in its discretion transfer such proceeding to a court in an appropriate venue for good cause shown based either upon changes in circumstances or mistakes of fact or upon agreement of the parties. In any transfer of venue in cases involving children, the best interests of the child shall be considered in deciding if and to which court a transfer of venue would be appropriate.

5. Enforcement of orders for support, maintenance and custody: Any juvenile and domestic relations district court to which a suit is transferred for enforcement of orders pertaining to support, maintenance, care or custody pursuant to § 20-79 (c) may transfer the case as provided in this section.

C. Records: Originals of all legal and social records pertaining to the case shall accompany the transfer of venue. Records imaged from the original documents shall be considered original documents for purposes of the transfer of venue. The transferor court may, in its discretion, retain copies as it deems appropriate.

Code 1950, § 16.1-160; 1956, c. 555; 1977, c. 559; 1985, c. 367; 1987, cc. 598, 608, 620; 1989, c. 545; 1995, cc. 772, 826; 1996, c. 866; 2000, c. 830; 2010, cc. 717, 760; 2012, c. 424; 2018, c. 17; 2019, cc. 126, 235.

§ 16.1-244. Concurrent jurisdiction; exceptions.

A. Nothing contained in this law shall deprive any other court of the concurrent jurisdiction to determine the custody of children upon a writ of habeas corpus under the law, or to determine the custody, guardianship, visitation or support of children when such custody, guardianship, visitation or support is incidental to the determination of causes pending in such courts, nor deprive a circuit court of jurisdiction to determine spousal support in a suit for separate maintenance. However, when a suit for divorce has been filed in a circuit court, in which the custody, guardianship, visitation or support of children of the parties or spousal support is raised by the pleadings and a hearing, including a pendente lite hearing, is set by the circuit court on any such issue for a date certain or placed on a motions docket within 21 days of the filing, though such hearing itself may occur after such 21-day period, the juvenile and domestic relations district courts shall be divested of the right to enter any further decrees or orders to determine custody, guardianship, visitation or support when raised for such hearing and such matters shall be determined by the circuit court unless both parties agreed to a referral to the juvenile court. In any case in which the jurisdiction of the juvenile and domestic relations district court has been divested pursuant to this section and no final support order has been entered, any award for child support or spousal support in the circuit court shall be retroactive to the date on which the proceeding was commenced by the filing of the action in the juvenile and domestic relations district court, provided that the petitioner exercised due diligence in the service of the respondent. Nothing in this section shall deprive a circuit court of the authority to refer any such case to a commissioner for a hearing or shall deprive the juvenile and domestic relations district courts of the jurisdiction to enforce its valid orders prior to the entry of a conflicting order of any circuit court for any period during which the order was in effect or to temporarily place a child in the custody of any person when that child has been adjudicated abused, neglected, in need of services or delinquent subsequent to the order of any circuit court.

B. Jurisdiction of cases involving violations of federal law by a child shall be concurrent and shall be assumed only if waived by the federal court or the United States attorney.

Code 1950, § 16.1-161; 1956, c. 555; 1977, c. 559; 1978, c. 740; 1984, cc. 657, 669; 1985, c. 183; 1987, c. 36; 1989, c. 509; 1990, c. 600; 2000, c. 781; 2003, c. 129; 2022, c. 527; 2023, c. 622.

§ 16.1-245. Transfer from other courts.

If, during the pendency of a proceeding in any other court, it is ascertained for the first time that exclusive jurisdiction lies within the juvenile and domestic relations district court, such court shall forthwith transfer the case, together with all papers, documents and evidence connected therewith, to the juvenile and domestic relations district court of the city or county having jurisdiction. The court making the transfer shall determine who is to have custody of the child pending action by the juvenile and domestic relations district court pursuant to § 16.1-247. If, during the pendency of a proceeding in the

juvenile and domestic relations district court, it is ascertained for the first time that exclusive jurisdiction lies in the general district or circuit court, the juvenile and domestic relations district court shall likewise transfer the case to the appropriate court.

Code 1950, § 16.1-175; 1956, c. 555; 1977, c. 559; 1992, c. 496.

§ 16.1-245.1. Medical evidence admissible in juvenile and domestic relations district court.

In any civil case heard in a juvenile and domestic relations district court involving allegations of child abuse or neglect or family abuse, any party may present evidence, by a report from the treating or examining health care provider as defined in § 8.01-581.1 or the records of a hospital, medical facility or laboratory at which the treatment, examination or laboratory analysis was performed, or both, as to the extent, nature, and treatment of any physical condition or injury suffered by a person and the examination of the person or the result of the laboratory analysis.

A medical report shall be admitted if the party intending to present such evidence at trial or hearing gives the opposing party or parties a copy of the evidence and written notice of intention to present it at least 10 days, or in the case of a preliminary removal hearing under § 16.1-252 or in preliminary protective order hearings under § 16.1-253 or 16.1-253.1 at least 24 hours, prior to the trial or hearing and if attached to such evidence is a sworn statement of the treating or examining health care provider or laboratory analyst who made the report that (i) the information contained therein is true, accurate, and fully describes the nature and extent of the physical condition or injury and (ii) the patient named therein was the person treated or examined by such health care provider; or, in the case of a laboratory analysis, that the information contained therein is true and accurate.

A hospital or other medical facility record shall be admitted if attached to it is a sworn statement of the custodian thereof that the same is a true and accurate copy of the record of such hospital or other medical facility. If thereafter a party summons the health care provider or custodian making such statement to testify in proper person or by deposition taken de bene esse, the court shall determine which party shall pay the fees and costs for such appearance or depositions, or may apportion the same among the parties in such proportion as the ends of justice may require. If such health care provider or custodian is not subject to subpoena for cross-examination in court or by a deposition de bene esse, then the court shall allow a reasonable opportunity for the party seeking the subpoena for such health care provider or custodian to obtain his testimony as the ends of justice may require.

1990, c. 560; 1996, c. 866; 2000, c. 163; 2019, c. 716.

§ 16.1-245.2. Evidence of medical reports, statements, or records; testimony of health care provider or custodian of records in juvenile and domestic relations district court; custody, visitation, placement, and support cases.

A. Notwithstanding § 8.01-399, 8.01-400.2, 8.01-401.1, or 8.01-413, and except as provided in § 16.1-245.1, in any civil case heard in a juvenile and domestic relations district court involving the custody, visitation, placement, or support of a child or spouse, any party, including a guardian ad litem, may

present evidence as to the extent, nature, and treatment of a party or child and the costs of such treatment and examination by the following:

1. A report or statement from the treating or examining health care provider as defined in § 8.01-581.1 or a health care provider licensed outside of the Commonwealth for his treatment of the party or child outside of the Commonwealth. Such report or statement shall be admitted if the party intending to present such evidence gives the opposing party or parties and, if applicable, guardian ad litem, a copy of such evidence and written notice of such intention 30 days in advance of trial and if attached to or contained in such evidence is a sworn declaration of (i) the treating or examining health care provider that (a) the person named therein was treated or examined by such health care provider, (b) the information contained in the report or statement is true and accurate and fully descriptive as to the nature and extent of the treatment and any conclusions which result therefrom, and (c) any statement of costs contained in the report or statement is true and accurate or (ii) the custodian of such report or statement that the same is a true and accurate copy of the report or statement; or

2. The bills showing the costs of examination or treatment or records of a treating or examining health care provider as defined in § 8.01-581.1 or a health care provider licensed outside of the Commonwealth for its treatment of a party or child outside of the Commonwealth. Such provider's records or bills shall be admitted if (i) the party intending to present evidence by the use of records or bills gives the opposing party or parties and, if applicable, the guardian ad litem a copy of the records or bills and written notice of such intention 30 days in advance of trial and (ii) attached to the records or bills is a sworn declaration of the custodian thereof that the same is a true and accurate copy of the records or bills of such provider.

If, thereafter, a party or guardian ad litem summons the health care provider or custodian making such statement to testify in proper person, the court shall determine which party shall pay the fee and costs for such appearance or may apportion the same among the parties in such proportions as the ends of justice may require. If such health care provider or custodian is not subject to subpoena for cross-examination in court, then the court shall allow a reasonable opportunity for the party seeking the subpoena for such health care provider or custodian to obtain his testimony as the ends of justice may require.

B. If an opposing party intends to file a pleading in response to the evidence to be presented pursuant to subsection A, such party shall do so at least 15 days in advance of trial.

2023, cc. 398, 399.

Article 4 - IMMEDIATE CUSTODY, ARREST, DETENTION AND SHELTER CARE

§ 16.1-246. When and how child may be taken into immediate custody.

No child may be taken into immediate custody except:

A. With a detention order issued by the judge, the intake officer or the clerk, when authorized by the judge, of the juvenile and domestic relations district court in accordance with the provisions of this law or with a warrant issued by a magistrate; or

B. When a child is alleged to be in need of services or supervision and (i) there is a clear and substantial danger to the child's life or health or (ii) the assumption of custody is necessary to ensure the child's appearance before the court; or

C. When, in the presence of the officer who makes the arrest, a child has committed an act designated a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law and the officer believes that such is necessary for the protection of the public interest; or

C1. When a child has committed a misdemeanor offense involving (i) shoplifting in violation of § 18.2-103, (ii) assault and battery or (iii) carrying a weapon on school property in violation of § 18.2-308.1 and, although the offense was not committed in the presence of the officer who makes the arrest, the arrest is based on probable cause on reasonable complaint of a person who observed the alleged offense; or

D. When there is probable cause to believe that a child has committed an offense which if committed by an adult would be a felony; or

E. When a law-enforcement officer has probable cause to believe that a person committed to the Department of Juvenile Justice as a child has run away or that a child has escaped from a jail or detention home; or

F. When a law-enforcement officer has probable cause to believe a child has run away from a residential, child-caring facility or home in which he had been placed by the court, the local department of social services or a licensed child welfare agency; or

G. When a law-enforcement officer has probable cause to believe that a child (i) has run away from home or (ii) is without adult supervision at such hours of the night and under such circumstances that the law-enforcement officer reasonably concludes that there is a clear and substantial danger to the child's welfare; or

H. When a child is believed to be in need of inpatient treatment for mental illness as provided in § 16.1-340.

Code 1950, § 16.1-194; 1956, c. 555; 1958, c. 344; 1974, cc. 585, 671; 1977, c. 559; 1978, cc. 643, 740; 1979, c. 701; 1981, c. 487; 1982, c. 683; 1985, c. 540; 1990, cc. 635, 642, 743, 744, 975; 2002, c. 747.

§ 16.1-247. Duties of person taking child into custody.

A. A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto, bring the child to the judge or intake officer

of the court and the judge, intake officer or arresting officer shall, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

B. A person taking a child into custody pursuant to the provisions of subsection B, C, or D of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to such child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for such child and issue oral counsel and warning as may be appropriate; or

2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis upon their promise to bring the child before the court when requested; or

3. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis. Nothing herein shall prevent the child from being held for the purpose of administering a blood or breath test to determine the alcoholic content of his blood where the child has been taken into custody pursuant to § 18.2-266.

C. A person taking a child into custody pursuant to the provisions of subsections E and F of § 16.1-246, during such hours as the court is open, shall, with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to the institution, facility or home from which he ran away or escaped; or

2. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the institution, facility or home in which the child had been placed and orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

D. A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is not open, shall with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child taken into custody pursuant to a warrant on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2; or

2. Place the child in a detention home or in shelter care; or

3. Place the child in a jail subject to the provisions of § 16.1-249.

E. A person taking a child into custody pursuant to the provisions of subsection B, C, or D of § 16.1-246 during such hours as the court is not open, shall:

1. Release the child pursuant to the provisions of subdivision B 1 or B 2 of this section; or

2. Release the child on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2; or

3. Place the child taken into custody pursuant to subsection B of § 16.1-246 in shelter care after the issuance of a detention order pursuant to § 16.1-255; or

4. Place the child taken into custody pursuant to subsection C or D of § 16.1-246 in shelter care or in a detention home after the issuance of a warrant by a magistrate; or

5. Place the child in a jail subject to the provisions of § 16.1-249 after the issuance of a warrant by a magistrate or after the issuance of a detention order pursuant to § 16.1-255; or

6. In addition to any other provisions of this subsection, detain the child for a reasonably necessary period of time in order to administer a breath or blood test to determine the alcohol content of his blood, if such child was taken into custody pursuant to § 18.2-266.

F. A person taking a child into custody pursuant to the provisions of subsection E of § 16.1-246, during such hours as the court is not open, shall:

1. Release the child to the institution or facility from which he ran away or escaped; or

2. Detain the child in a detention home or in a jail subject to the provisions of § 16.1-249 after the issuance of a warrant by a magistrate or after the issuance of a detention order pursuant to § 16.1-255.

G. A person taking a child into custody pursuant to the provisions of subsection F of § 16.1-246, during such hours as the court is not open, shall:

1. Release the child to the facility or home from which he ran away; or

2. Detain the child in shelter care after the issuance of a detention order pursuant to § 16.1-255 or after the issuance of a warrant by a magistrate.

H. If a parent, guardian or other custodian fails, when requested, to bring the child before the court as provided in subdivisions B 2 and E 1, the court may issue a detention order directing that the child be taken into custody and be brought before the court.

I. A law-enforcement officer taking a child into custody pursuant to the provisions of subsection G of § 16.1-246 shall notify the intake officer of the juvenile court of the action taken. The intake officer shall determine if the child's conduct or situation is within the jurisdiction of the court and if a petition should be filed on behalf of the child. If the intake officer determines that a petition should not be filed, the law-enforcement officer shall as soon as practicable:

1. Return the child to his home;

2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis;

3. Place the child in shelter care for a period not longer than 24 hours after the issuance of a detention order pursuant to § 16.1-255; or

4. Release the child.

During the period of detention authorized by this subsection no child shall be confined in any detention home, jail or other facility for the detention of adults.

J. If a child is taken into custody pursuant to the provisions of subsection B, F, or G of § 16.1-246 by a law-enforcement officer during such hours as the court is not in session and the child is not released or transferred to a facility or institution in accordance with subsection E, G, or I of this section, the child shall be held in custody only so long as is reasonably necessary to complete identification, investigation and processing. The child shall be held under visual supervision in a nonlocked, multipurpose area which is not designated for residential use. The child shall not be handcuffed or otherwise secured to a stationary object.

K. When an adult is taken into custody pursuant to a warrant, detention order, or capias alleging a delinquent act committed when he was a juvenile, he may be released on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2. An intake officer shall have the authority to issue a capias for an adult under the age of 21 who is alleged to have committed, before attaining the age of 18, an offense that would be a crime if committed by an adult.

Code 1950, § 16.1-197; 1956, c. 550; 1958, c. 344; 1973, c. 440; 1974, c. 584; 1975, c. 248; 1977, c. 559; 1978, c. 643; 1979, c. 701; 1984, c. 567; 1992, cc. 728, 830; 2004, cc. 415, 439; 2012, c. 253; 2016, c. 626.

§ 16.1-247.1. Custodial interrogation of a child; parental notification and contact.

A. Prior to any custodial interrogation of a child by a law-enforcement officer who has arrested such child pursuant to subsection C, C1, or D of § 16.1-246, the child's parent, guardian, or legal custodian shall be notified of his arrest and the child shall have contact with his parent, guardian, or legal custodian. The notification and contact required by this subsection may be in person, electronically, by telephone, or by video conference.

B. Notwithstanding the provisions of subsection A, a custodial interrogation may be conducted if (i) the child's parent, guardian, or legal custodian is a codefendant in the alleged offense; (ii) the child's parent, guardian, or legal custodian has been arrested for, has been charged with, or is being investigated for a crime against the child; (iii) if, after every reasonable effort has been made to comply with subsection A, the child's parent, guardian, or legal custodian cannot be located or refuses contact with the child; or (iv) if the law-enforcement officer conducting the custodial interrogation reasonably believes the information sought is necessary to protect life, limb, or property from an imminent danger and the law-enforcement officer's questions are limited to those that are reasonably necessary to obtain such information.

2020, c. 480.

§ 16.1-248. Repealed.

Repealed by Acts 1985, c. 260.

§ 16.1-248.1. Criteria for detention or shelter care.

A. A juvenile taken into custody whose case is considered by a judge, intake officer or magistrate pursuant to § 16.1-247 shall immediately be released, upon the ascertainment of the necessary facts, to the care, custody and control of such juvenile's parent, guardian, custodian or other suitable person able and willing to provide supervision and care for such juvenile, either on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2 or under such conditions as may be imposed or otherwise. However, at any time prior to an order of final disposition, a juvenile may be detained in a secure facility, pursuant to a detention order or warrant, only upon a finding by the judge, intake officer, or magistrate, that there is probable cause to believe that the juvenile committed the act alleged, and that at least one of the following conditions is met:

1. The juvenile is alleged to have (a) 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; (b) committed an act that would be a felony or Class 1 misdemeanor if committed by an adult; or (c) violated any of the provisions of § 18.2-308.7, and there is clear and convincing evidence that:

a. Considering the seriousness of the current offense or offenses and other pending charges, the seriousness of prior adjudicated offenses, the legal status of the juvenile and any aggravating and mitigating circumstances, the liberty of the juvenile, constitutes a clear and substantial threat to the person or property of others;

b. The liberty of the juvenile would present a clear and substantial threat of serious harm to such juvenile's life or health; or

c. The juvenile has threatened to abscond from the court's jurisdiction during the pendency of the instant proceedings or has a record of willful failure to appear at a court hearing within the immediately preceding 12 months.

2. The juvenile has absconded from a detention home or facility where he has been directed to remain by the lawful order of a judge or intake officer.

3. The juvenile is a fugitive from a jurisdiction outside the Commonwealth and subject to a verified petition or warrant, in which case such juvenile may be detained for a period not to exceed that provided for in § 16.1-323 while arrangements are made to return the juvenile to the lawful custody of a parent, guardian or other authority in another state.

4. The juvenile has failed to appear in court after having been duly served with a summons in any case in which it is alleged that the juvenile has committed a delinquent act or that the child is in need of services or is in need of supervision; however, a child alleged to be in need of services or in need of supervision may be detained for good cause pursuant to this subsection only until the next day upon which the court sits within the county or city in which the charge against the child is pending, and

under no circumstances longer than 72 hours from the time he was taken into custody. If the 72-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 72 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

5. The juvenile failed to adhere to the conditions imposed upon him by the court, intake officer or magistrate following his release upon a Class 1 misdemeanor charge or a felony charge.

However, no juvenile younger than 11 years of age shall be placed in secure detention unless such juvenile is alleged to have committed one or more of the delinquent acts enumerated in subsection B or C of § 16.1-269.1.

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

B. Any juvenile not meeting the criteria for placement in a secure facility shall be released to a parent, guardian or other person willing and able to provide supervision and care under such conditions as the judge, intake officer or magistrate may impose. However, a juvenile may be placed in shelter care if:

1. The juvenile is eligible for placement in a secure facility;

2. The juvenile has failed to adhere to the directions of the court, intake officer or magistrate while on conditional release;

3. The juvenile's parent, guardian or other person able to provide supervision cannot be reached within a reasonable time;

4. The juvenile does not consent to return home;

5. Neither the juvenile's parent or guardian nor any other person able to provide proper supervision can arrive to assume custody within a reasonable time; or

6. The juvenile's parent or guardian refuses to permit the juvenile to return home and no relative or other person willing and able to provide proper supervision and care can be located within a reasonable time.

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

D. The criteria for continuing the juvenile in detention or shelter care as set forth in this section shall govern the decisions of all persons involved in determining whether the continued detention or shelter care is warranted pending court disposition. Such criteria shall be supported by clear and convincing evidence in support of the decision not to release the juvenile.

E. Nothing in this section shall be construed to deprive the court of its power to punish a juvenile summarily for contempt for acts set forth in § 18.2-456, other than acts of disobedience of the court's dispositional order which are committed outside the presence of the court.

F. A detention order may be issued pursuant to subdivision A 2 by the committing court or by the court in the jurisdiction from which the juvenile fled or where he was taken into custody.

G. The court is authorized to detain a juvenile based upon the criteria set forth in subsection A at any time after a delinquency petition has been filed, both prior to adjudication and after adjudication pending final disposition subject to the time limitations set forth in § 16.1-277.1.

H. If the intake officer or magistrate releases the juvenile, either on bail or recognizance or under such conditions as may be imposed, no motion to revoke bail, or change such conditions may be made unless (i) the juvenile has violated a term or condition of his release, or is convicted of or taken into custody for an additional offense, or (ii) the attorney for the Commonwealth presents evidence that incorrect or incomplete information regarding the factors in subsection A was relied upon by the intake officer or magistrate establishing the initial terms of release. If the juvenile court releases the juvenile, either on bail or recognizance or under such conditions as may be imposed, over the objection of the attorney for the Commonwealth, the attorney for the Commonwealth may appeal such decision to the circuit court. The order of the juvenile court releasing the juvenile shall remain in effect until the circuit court, Court of Appeals or Supreme Court rules otherwise.

1977, c. 559; 1979, c. 701; 1985, c. 260; 1986, c. 517; 1987, c. 632; 1989, c. 725; 1990, c. 257; 1996, cc. 755, 914; 2000, c. 836; 2001, c. 837; 2002, cc. 55, 359; 2003, cc. 104, 851; 2004, c. 374; 2005, c. 647; 2010, c. 683; 2011, c. 644; 2021, Sp. Sess. I, c. 115.

§ 16.1-248.2. Mental health screening and assessment for certain juveniles.

Whenever a juvenile is placed in a secure facility pursuant to § 16.1-248.1, the staff of the facility shall gather such information from the juvenile and the probation officer as is reasonably available and deemed necessary by the facility staff. As part of the intake procedures at each such facility, the staff shall ascertain the juvenile's need for a mental health assessment. If it is determined that the juvenile needs such an assessment, the assessment shall take place within twenty-four hours of such determination. The community services board serving the jurisdiction where the facility is located shall be responsible for conducting the assessments and shall be compensated from funds appropriated to the Department of Juvenile Justice for this purpose. The Department of Juvenile Justice shall develop criteria and a compensation plan for such assessments.

1996, cc. 755, 914; 1998, c. 434.

§ 16.1-248.3. Medical records of juveniles in secure facility.

Whenever a juvenile is placed in a secure facility or a shelter care facility pursuant to § 16.1-248.1, the director of the facility or his designee shall be entitled to obtain medical records concerning the juvenile from a provider. Prior to using the authority granted by this section to obtain such records, the director of the facility or his designee shall make a reasonable attempt to obtain consent for the release of the records from the juvenile's parent or legal guardian or, in instances where the juvenile may consent pursuant to § 54.1-2969, from the juvenile. The director of the facility or his designee may proceed to obtain the records from the provider if such consent is refused or is not readily obtainable and

the records are necessary (i) for the provision of health care to the juvenile, (ii) to protect the health and safety of the juvenile or other residents or staff of the facility or (iii) to maintain the security and safety of the facility.

The director or his designee shall document in writing the reason that the records were requested and that a reasonable attempt was made to obtain consent for the release of records and that consent was refused or not readily obtainable.

No person to whom disclosure of records was made pursuant to this section shall redisclose or otherwise reveal the records, beyond the purpose for which such disclosure was made, without first obtaining specific consent to redisclose from the juvenile's parent or legal guardian or, in instances where the juvenile may consent pursuant to § 54.1-2969, from the juvenile.

Substance abuse records subject to federal regulations, Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2, shall not be subject to the provisions of this section. The disclosure of results of a test for human immunodeficiency virus shall not be permitted except as provided in § 32.1-36.1.

The definitions of "provider" and "records" in § 32.1-127.1:03 shall apply to this section.

2003, c. 983.

§ 16.1-249. Places of confinement for juveniles.

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

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

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

3. If a juvenile is alleged to be delinquent, a detention home or group home approved by the Department;

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

5. To the extent permitted by federal law, a separate juvenile detention facility located upon the site of an adult regional jail facility established by any county, city or any combination thereof constructed after 1994, approved by the Department of Juvenile Justice and certified by the Board of Juvenile Justice for the holding and detention of juveniles.

A juvenile younger than 11 years of age who is alleged to have committed one or more of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 and who is ordered to remain in detention or shelter care pursuant to § 16.1-248.1 pending a court hearing may only be detained in a place described in subdivision 1, 2, or 4, but under no circumstances shall such juvenile be detained pursuant to this section in a secure detention facility.

B. No juvenile shall be detained or confined in any jail or other facility for the detention of adult offenders or persons charged with crime except as provided in subsection D, E, F or G.

C. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a juvenile who is or appears to be under the age of 18 years is received at the facility, and shall deliver him to the court upon request, or transfer him to a detention facility designated by the court.

D. When a case is transferred to the circuit court in accordance with the provisions of subsection A of § 16.1-269.1 and an order is entered by the circuit court in accordance with § 16.1-269.6, or in accordance with the provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the district court, or when the district court has certified a charge to the grand jury pursuant to subsection B or C of § 16.1-269.1, the juvenile, if in confinement, shall be placed in a juvenile secure facility, unless the court determines that the juvenile is a threat to the security or safety of the other juveniles detained or the staff of the facility, in which case the court may transfer the juvenile to a jail or other facility for the detention of adults, provided that the facility is approved by the State Board of Local and Regional Jails for the detention of juveniles.

E. If, in the judgment of the custodian, a juvenile has demonstrated that he is a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the judge shall determine whether such juvenile should be transferred to another juvenile facility or, if the child is 14 years of age or older, a jail or other facility for the detention of adults, provided that (i) the detention is in a room or ward entirely separate and removed from adults, (ii) adequate supervision is provided, and (iii) the facility is approved by the State Board of Local and Regional Jails for detention of juveniles.

F. If, in the judgment of the custodian, it has been demonstrated that the presence of a juvenile in a facility creates a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the custodian may transfer the juvenile to another juvenile facility, or, if the child is 14 years of age or older, a jail or other facility for the detention of adults pursuant to the limitations of clauses (i), (ii) and (iii) of subsection E for a period not to exceed six hours prior to a court hearing and an additional six hours after the court hearing unless a longer period is ordered pursuant to subsection E.

G. If a juvenile 14 years of age or older is charged with an offense which, if committed by an adult, would be a felony or Class 1 misdemeanor, and the judge or intake officer determines that secure detention is needed for the safety of the juvenile or the community, such juvenile may be detained for a period not to exceed six hours prior to a court hearing and six hours after the court hearing in a temporary lock-up room or ward for juveniles while arrangements are completed to transfer the juvenile to a juvenile facility. Such room or ward may be located in a building which also contains a jail or other facility for the detention of adults, provided that (i) such room or ward is totally separate and removed from adults or juveniles transferred to the circuit court pursuant to Article 7 (§ 16.1-269.1 et seq.), (ii) constant supervision is provided, and (iii) the facility is approved by the State Board of Local and Regional Jails for the detention of juveniles. The State Board of Local and Regional Jails is authorized and directed to prescribe minimum standards for temporary lock-up rooms and wards based on the requirements set out in this subsection.

G1. Any juvenile who has been ordered detained in a secure detention facility pursuant to § 16.1-248.1 may be held incident to a court hearing (i) in a court holding cell for a period not to exceed six hours, provided that the juvenile is entirely separate and removed from detained adults, or (ii) in a non-secure area, provided that constant supervision is provided.

H. If a judge, intake officer or magistrate orders the predispositional detention of persons 18 years of age or older, such detention shall be in an adult facility; however, if the predispositional detention is ordered for a violation of the terms and conditions of release from a juvenile correctional center, the judge, intake officer or magistrate may order such detention be in a juvenile facility.

I. The Departments of Corrections, Juvenile Justice and Criminal Justice Services shall assist the localities or combinations thereof in implementing this section and ensuring compliance herewith.

1977, c. 559; 1979, c. 655; 1983, c. 336; 1985, c. 260; 1988, c. 886; 1989, c. 557; 1993, c. 435; 1994, cc. 859, 904, 949; 1995, cc. 746, 748, 798, 802; 1996, cc. 755, 914; 1998, cc. 576, 830; 2002, c. 558; 2004, cc. 415, 439; 2010, c. 739; 2018, cc. 36, 73; 2020, c. 759; 2021, Sp. Sess. I, c. 115.

§ 16.1-249.1. Places of confinement to give notice of intake of certain persons.

A. At the time of receipt of any person, for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 into a secure facility, the secure facility shall obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police. A person required to register shall register and submit to be photographed as part of the registration. The facility shall forthwith forward the registration information to the Department of State Police on the date of the receipt of the prisoner.

B. Whenever a person required to register has failed to comply with the provisions of subsection A, the facility shall promptly investigate or request the State Police promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant, or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was received. The facility shall notify the State Police forthwith of such actions taken pursuant to this section.

2006, cc. 857, 914.

§ 16.1-250. Procedure for detention hearing.

A. When a child has been taken into immediate custody and not released as provided in § 16.1-247 or § 16.1-248.1, such child shall appear before a judge on the next day on which the court sits within the county or city wherein the charge against the child is pending. In the event the court does not sit within the county or city on the following day, such child shall appear before a judge within a reasonable time, not to exceed 72 hours, after he has been taken into custody. If the 72-hour period expires on a Saturday, Sunday or other legal holiday, the 72 hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday. In the event the court does not sit on the following day within the county or city wherein the charge against the child is pending, the court may conduct the hearing in

another county or city, but only if two-way electronic video and audio communication is available in the courthouse of the county or city wherein the charge is pending.

B. The appearance of the child, the attorney for the Commonwealth, the attorney for the child and the parent, guardian, legal custodian or other person standing in loco parentis may be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by electronically transmitted facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

C. Notice of the detention hearing or any rehearing, either oral or written, stating the time, place and purpose of the hearing shall be given to the parent, guardian, legal custodian or other person standing in loco parentis if he can be found, to the child's attorney, to the child if 12 years of age or older and to the attorney for the Commonwealth.

D. During the detention hearing, the parties shall be informed of the child's right to remain silent with respect to any allegation of delinquency and of the contents of the petition. The attorney for the child and the attorney for the Commonwealth shall be given the opportunity to be heard.

E. If the judge finds that there is not probable cause to believe that the child committed the delinquent act alleged, the court shall order his release. If the judge finds that there is probable cause to believe that the child committed the delinquent act alleged but that the full-time detention of a child who is alleged to be delinquent is not required, the court shall order his release, and in so doing, the court may impose one or more of the following conditions singly or in combination:

1. Place the child in the custody of a parent, guardian, legal custodian or other person standing in loco parentis under their supervision, or under the supervision of an organization or individual agreeing to supervise him;

2. Place restrictions on the child's travel, association or place of abode during the period of his release;

3. Impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children specified in § 16.1-248.1; or

4. Release the child on bail or recognizance in accordance with the provisions of Chapter 9 (§ 19.2-119 et seq.) of Title 19.2.

F. An order releasing a child on any of the conditions specified in this section may, at any time, be amended to impose additional or different conditions of release or to return the child who is alleged to be delinquent to custody for failure to conform to the conditions previously imposed.

G. All relevant and material evidence helpful in determining probable cause under this section or the need for detention may be admitted by the court even though not competent in a hearing on the petition.

H. If the child is not released and a parent, guardian, legal custodian or other person standing in loco parentis is not notified and does not appear or does not waive appearance at the hearing, upon the written request of such person stating 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, the court shall rehear the matter on the next day on which the court sits within the county or city wherein the charge against the child is pending. If the court does not sit within the county or city on the following day, such hearing shall be held before a judge within a reasonable time, not to exceed 72 hours, after the request.

I. In considering probable cause under this section, if the court deems it necessary to summon witnesses to assist in such determination then the hearing may be continued and the child remain in detention, but in no event longer than three consecutive days, exclusive of Saturdays, Sundays, and legal holidays.

1977, c. 559; 1979, c. 338; 1985, c. 260; 1986, c. 542; 1988, c. 220; 1989, c. 549; 1992, c. 508; 1995, c. 451; 2004, c. 437; 2006, c. 89.

§ 16.1-250.1. Repealed.

Repealed by Acts 2004, c. 437, cl. 2, effective July 1, 2005.

§ 16.1-251. Emergency removal order.

A. A child may be taken into immediate custody and placed in shelter care pursuant to an emergency removal order in cases in which the child is alleged to have been abused or neglected. Such order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition.

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

If the petitioner fails to obtain an emergency removal order within four hours of taking custody of the child, the affidavit or sworn testimony before the judge or intake officer shall state the reasons therefor.

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

The petitioner shall not be required by the court to make reasonable efforts to prevent removal of the child from his home if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

B. Whenever a child is taken into immediate custody pursuant to an emergency removal order, a hearing shall be held in accordance with § 16.1-252 as soon as practicable, but in no event later than five business days after the removal of the child.

C. In the emergency removal order the court shall give consideration to temporary placement of the child with a person with a legitimate interest under the supervision of the local department of social services, until such time as the hearing in accordance with § 16.1-252 is held.

D. The local department of social services having "legal custody" of a child as defined in § 16.1-228 (i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

1977, c. 559; 1984, c. 499; 1985, c. 584; 1986, c. 308; 1990, c. 769; 2000, c. 385; 2003, c. 508; 2017, c. 190; 2019, c. 434.

§ 16.1-252. Preliminary removal order; hearing.

A. A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

B. Prior to the removal hearing, notice of the hearing shall be given at least 24 hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is 12 years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing; (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child; and (iii) notice that child support will be considered if a determination is made that the child must be removed from the home.

C. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf. If the child was 14 years of age or under on the date of the alleged offense and is 16 or under at the time of the hearing, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the Department of Social Services, the local department of social services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of § 63.2-1521 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least 48 hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

E. In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition; and

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

The petitioner shall not be required by the court to make reasonable efforts to prevent removal of the child from his home if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

F. If the court determines that pursuant to subsection E hereof the removal of the child is proper, the court shall:

1. Order that the child be placed in the temporary care and custody of a suitable person, subject to the provisions of subsection F1 and under the supervision of the local department of social services, with consideration being given to placement in the temporary care and custody of a person with a legitimate interest until such time as the court enters an order of disposition pursuant to § 16.1-278.2, or, if such placement is not available, in the care and custody of a suitable agency;

2. Order that reasonable visitation be allowed between the child and his parents, guardian, legal custodian or other person standing in loco parentis, and between the child and his siblings, if such visitation would not endanger the child's life or health; and

3. Order that the parent or other legally obligated person pay child support pursuant to § 16.1-290.

In addition, the court may enter a preliminary protective order pursuant to § 16.1-253 imposing requirements and conditions as specified in that section which the court deems appropriate for protection of the welfare of the child.

F1. Prior to the entry of an order pursuant to subsection F transferring temporary custody of the child to a person with a legitimate interest, the court shall consider whether such person is one who (i) is willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a person with a legitimate interest should provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § 16.1-253; initiation and completion of the investigation as directed by the court and court review of the child's placement required in accordance with the provisions of § 16.1-278.2; and, as appropriate, ongoing provision of social services to the child and the temporary custodian.

G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within 30 days of the date of the initial preliminary removal hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect

have been proven by a preponderance of the evidence. Parties who are present at the preliminary removal order hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered, although a party to the preliminary removal order hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.

The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary removal order hearing and shall be held within 60 days of the preliminary removal order hearing. If an adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § 16.1-263.

I. The local department of social services having "legal custody" of a child as defined in § 16.1-228 (i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

J. Violation of any order issued pursuant to this section shall constitute contempt of court.

1977, c. 559; 1984, c. 499; 1985, c. 584; 1986, c. 308; 1990, c. 769; 1994, c. 42; 1995, c. 817; 1997, c. 790; 1999, c. 668; 2000, c. 385; 2008, c. 397; 2013, c. 130; 2017, c. 190; 2019, c. 434.

§ 16.1-253. Preliminary protective order.

A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary protective order, after a hearing, if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court. The order may require a child's parents, guardian, legal custodian, other person standing in loco parentis or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time. These conditions shall include any one or more of the following:

1. To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;

2. To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;

3. To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the physical or emotional health of the child;

4. To allow visitation with the child by persons entitled thereto, as determined by the court;

5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development;

6. To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition; or

7. To grant the person on whose behalf the order is issued the possession of any companion animal as defined in § 3.2-6500 if such person meets the definition of owner in § 3.2-6500.

B. A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irremediable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

C. Prior to the hearing required by this section, notice of the hearing shall be given at least 24 hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is 12 years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

D. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall

have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this section the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within 30 days of the date of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at the hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § 16.1-263. The adjudicatory hearing shall be held and an order may be entered, although a party to the hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.

Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

G. If at the preliminary protective order hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of the preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network

established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the allegedly abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the dispositional hearing. The dispositional hearing shall be scheduled at the time of the hearing pursuant to this section, and shall be held within 60 days of this hearing. If an adjudicatory hearing is requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at the hearing pursuant to this section. All parties present at the hearing shall be given notice of the date and time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § 16.1-263.

H. Nothing in this section enables the court to remove a child from the custody of his or her parents, guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2, and no order hereunder shall be entered against a person over whom the court does not have jurisdiction.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. Violation of any order issued pursuant to this section shall be punishable as contempt of court. However, if the violation involves an act or acts of commission or omission that endanger the child's life or health or result in bodily injury to the child, it shall be punishable as a Class 1 misdemeanor.

K. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of the preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name

of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the primary law-enforcement agency and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

L. No fee shall be charged for filing or serving any petition or order pursuant to this section.

1977, c. 559; 1985, c. 595; 1986, c. 308; 1987, c. 497; 1996, c. 866; 1997, c. 790; 1998, c. 550; 2002, cc. 508, 810, 818; 2008, cc. 73, 246; 2009, c. 732; 2013, c. 130; 2014, c. 346; 2021, Sp. Sess. I, cc. 184, 529.

§ 16.1-253.1. Preliminary protective orders in cases of family abuse; confidentiality.

A. Upon the filing of a petition alleging that the petitioner is or has been, within a reasonable period of time, subjected to family abuse, or the filing of a written motion requesting a hearing to extend a protective order pursuant to § 16.1-279.1 without alleging that the petitioner is or has been, within a reasonable period of time, subject to family abuse, the court may issue a preliminary protective order against an allegedly abusing person in order to protect the health and safety of the petitioner or any family or household member of the petitioner. The order may be issued in an ex parte proceeding upon good cause shown when the petition is supported by an affidavit or sworn testimony before the judge or intake officer or upon the filing of a written motion requesting a hearing to extend a protective order pursuant to § 16.1-279.1 without alleging that the petitioner is or has been, within a reasonable period of time, subject to family abuse. If an ex parte order is issued without an affidavit or a completed form as prescribed by subsection D of § 16.1-253.4 being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Immediate and present danger of family abuse or evidence sufficient to establish probable cause that family abuse has recently occurred shall constitute good cause. Evidence that the petitioner has been subjected to family abuse within a reasonable time and evidence of immediate and present danger of family abuse may be established by a showing that (i) the allegedly abusing person

is incarcerated and is to be released from incarceration within 30 days following the petition or has been released from incarceration within 30 days prior to the petition, (ii) the crime for which the allegedly abusing person was convicted and incarcerated involved family abuse against the petitioner, and (iii) the allegedly abusing person has made threatening contact with the petitioner while he was incarcerated, exhibiting a renewed threat to the petitioner of family abuse.

A preliminary protective order may include any one or more of the following conditions to be imposed on the allegedly abusing person:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property.

2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons.

3. Granting the petitioner possession of the premises occupied by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession shall affect title to any real or personal property.

4. Enjoining the respondent from terminating any necessary utility service to a premises that the petitioner has been granted possession of pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to such premises.

5. Granting the petitioner and, where appropriate, any other family or household member of the petitioner, exclusive use and possession of a cellular telephone number or electronic device and the password to such device. The court may enjoin the respondent from terminating a cellular telephone number or electronic device before the expiration of the contract term with a third-party provider. The court may enjoin the respondent from using a cellular telephone or other electronic device to locate or surveille the petitioner.

6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the allegedly abusing person; however, no such grant of possession or use shall affect title to the vehicle.

7. Requiring that the allegedly abusing person provide suitable alternative housing for the petitioner and any other family or household member and, where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided.

8. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

9. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner.

B. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected

person provided to the court. A copy of a preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. The preliminary order shall specify a date for the full hearing. The hearing shall be held within 15 days of the issuance of the preliminary order, unless the hearing has been continued pursuant to this subsection or court is closed pursuant to § 16.1-69.35 or 17.1-207 and such closure prevents the hearing from being held within such time period, in which case the hearing shall be held on the next day not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If such court is closed pursuant to § 16.1-69.35 or 17.1-207, the preliminary protective order shall remain in full force and effect until it is dissolved by such court, until another preliminary protective order is entered, or until a protective order is entered. If the respondent fails to appear at this hearing because the respondent was not personally served, or if personally served was incarcerated and not transported to the hearing, the court may extend the protective order for a period not to exceed six months. The extended protective order shall be served forthwith on the respondent. However, where the respondent shows good cause, the court may continue the hearing. The preliminary order shall remain in effect until the hearing. Upon request after the order is issued, the clerk shall provide the petitioner with a copy of the order and information regarding the date and time of service. The order shall further specify that either party may at any time file a motion with the court requesting a hearing to dissolve or modify the order. The hearing on the motion shall be given precedence on the docket of the court. Upon petitioner's motion to dissolve the preliminary protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be heard by the court as soon as practicable. If a dissolution order is issued ex parte, the court shall serve a copy of such dissolution order on respondent in conformity with §§ 8.01-286.1 and 8.01-296.

Upon receipt of the return of service or other proof of service pursuant to subsection C of § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the primary law-enforcement agency, and the agency shall forthwith verify and enter any modification as necessary into the Virginia Criminal Information Network as described above. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

C. The preliminary order is effective upon personal service on the allegedly abusing person. Except as otherwise provided in § 16.1-253.2, a violation of the order shall constitute contempt of court.

D. In the event that the allegedly abused person is a minor and an emergency protective order was issued pursuant to § 16.1-253.4 for the protection of such minor and the respondent is a parent, guardian, or person standing in loco parentis, the attorney for the Commonwealth or a law-enforcement officer may file a petition on behalf of such minor as his next friend before such emergency protective order expires or within 24 hours of the expiration of such emergency protective order.

E. At a full hearing on the petition, the court may issue a protective order pursuant to § 16.1-279.1 if the court finds that the petitioner has proven the allegation of family abuse by a preponderance of the evidence.

F. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

G. As used in this section, "copy" includes a facsimile copy.

H. No fee shall be charged for filing or serving any petition or order pursuant to this section.

I. Upon issuance of a preliminary protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.

1984, c. 631; 1987, c. 497; 1988, c. 165; 1992, c. 886; 1994, c. 907; 1996, c. 866; 1997, c. 603; 1998, c. 684; 2000, cc. 34, 654; 2001, c. 101; 2002, cc. 508, 810, 818; 2006, c. 308; 2007, c. 205; 2008, cc. 73, 246; 2009, cc. 343, 732; 2011, cc. 445, 480; 2014, c. 346; 2018, cc. 38, 652; 2019, cc. 197, 718; 2020, c. 137; 2023, cc. 370, 565, 620, 621.

§ 16.1-253.2. Violation of provisions of protective orders; penalty.

A. In addition to any other penalty provided by law, any person who violates any provision of a protective order issued pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103, when such violation involves a provision of the protective order that prohibits such person from (i) going or remaining upon land, buildings, or premises; (ii) further acts of family abuse; or (iii) committing a criminal offense, or which prohibits contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person as the court deems appropriate, is guilty of a Class 1 misdemeanor. The punishment for any person convicted of a second offense of violating a protective order, when the offense is committed within five years of the prior conviction and when either the instant or prior offense was based on an act or threat of violence, shall include a mandatory minimum term of confinement of 60 days. Any person convicted of a third or subsequent offense of violating a protective order, when the offense is committed within 20 years of the first conviction and when either the instant or one of the prior offenses was based on an act or threat of violence is guilty of a Class 6 felony and the punishment shall include a mandatory minimum term of confinement of six months. The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence.

B. In addition to any other penalty provided by law, any person who, while knowingly armed with a firearm or other deadly weapon, violates any provision of a protective order with which he has been served issued pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.14, or 16.1-279.1 or subsection B of § 20-103 is guilty of a Class 6 felony.

C. If the respondent commits an assault and battery upon any party protected by the protective order resulting in bodily injury to the party or stalks any party protected by the protective order in violation of § 18.2-60.3, he is guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law.

D. Upon conviction of any offense hereunder for which a mandatory minimum term of confinement is not specified, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended. Upon conviction, the court shall, in addition to the sentence imposed, enter a protective order pursuant to § 16.1-279.1 for a specified period not exceeding two years from the date of conviction.

E. A violation of this section may be prosecuted in the jurisdiction where the protective order was issued or in any county or city where any act constituting the violation of the protective order occurred.

1987, c. 700; 1988, c. 501; 1991, cc. 534, 715; 1992, c. 886; 1996, c. 866; 2003, c. 219; 2004, cc. 972, 980; 2007, cc. 745, 923; 2012, c. 637; 2013, cc. 761, 774; 2016, cc. 583, 585, 638; 2020, c. 487; 2021, Sp. Sess. I, cc. 184, 529.

§ 16.1-253.3. Repealed.

Repealed by Acts 1992, c. 886.

§ 16.1-253.4. Emergency protective orders authorized in certain cases; penalty.

A. Any judge of a circuit court, general district court, juvenile and domestic relations district court or magistrate may issue a written or oral ex parte emergency protective order pursuant to this section in order to protect the health or safety of any person.

B. When a law-enforcement officer or an allegedly abused person asserts under oath to a judge or magistrate, and on that assertion or other evidence the judge or magistrate (i) finds that a warrant for a violation of § 18.2-57.2 has been issued or issues a warrant for violation of § 18.2-57.2 and finds that there is probable danger of further acts of family abuse against a family or household member by the respondent or (ii) finds that reasonable grounds exist to believe that the respondent has committed family abuse and there is probable danger of a further such offense against a family or household member by the respondent, the judge or magistrate shall issue an ex parte emergency protective order, except if the respondent is a minor, an emergency protective order shall not be required, imposing one or more of the following conditions on the respondent:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;

2. Prohibiting such contacts by the respondent with the allegedly abused person or family or household members of the allegedly abused person, including prohibiting the respondent from being in the physical presence of the allegedly abused person or family or household members of the allegedly abused person, as the judge or magistrate deems necessary to protect the safety of such persons;

3. Granting the family or household member possession of the premises occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property; and

4. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500.

When the judge or magistrate considers the issuance of an emergency protective order pursuant to clause (i), he shall presume that there is probable danger of further acts of family abuse against a family or household member by the respondent unless the presumption is rebutted by the allegedly abused person.

C. An emergency protective order issued pursuant to this section shall expire at 11:59 p.m. on the third day following issuance. If the expiration occurs on a day that the court is not in session, the emergency protective order shall be extended until 11:59 p.m. on the next day that the juvenile and domestic relations district court is in session. When issuing an emergency protective order under this section, the judge or magistrate shall provide the protected person or the law-enforcement officer seeking the emergency protective order with the form for use in filing petitions pursuant to § 16.1-253.1 and written information regarding protective orders that shall include the telephone numbers of domestic violence agencies and legal referral sources on a form prepared by the Supreme Court. If these forms are provided to a law-enforcement officer, the officer may provide these forms to the protected person when giving the emergency protective order to the protected person. The respondent may at any time

file a motion with the court requesting a hearing to dissolve or modify the order issued hereunder. The hearing on the motion shall be given precedence on the docket of the court.

D. A law-enforcement officer may request an emergency protective order pursuant to this section and, if the person in need of protection is physically or mentally incapable of filing a petition pursuant to § 16.1-253.1 or 16.1-279.1, may request the extension of an emergency protective order for an additional period of time not to exceed three days after expiration of the original order. The request for an emergency protective order or extension of an order may be made orally, in person or by electronic means, and the judge of a circuit court, general district court, or juvenile and domestic relations district court or a magistrate may issue an oral emergency protective order. An oral emergency protective order issued pursuant to this section shall be reduced to writing, by the law-enforcement officer requesting the order or the magistrate on a preprinted form approved and provided by the Supreme Court of Virginia. The completed form shall include a statement of the grounds for the order asserted by the officer or the allegedly abused person.

E. The court or magistrate shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court or magistrate. A copy of an emergency protective order issued pursuant to this section containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. One copy of the order shall be given to the allegedly abused person when it is issued, and one copy shall be filed with the written report required by subsection D of § 19.2-81.3. The judge or magistrate who issues an oral order pursuant to an electronic request by a law-enforcement officer shall verify the written order to determine whether the officer who reduced it to writing accurately transcribed the contents of the oral order. The original copy shall be

filed with the clerk of the juvenile and domestic relations district court within five business days of the issuance of the order. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court. Upon request, the clerk shall provide the allegedly abused person with information regarding the date and time of service.

F. The availability of an emergency protective order shall not be affected by the fact that the family or household member left the premises to avoid the danger of family abuse by the respondent.

G. The issuance of an emergency protective order shall not be considered evidence of any wrongdoing by the respondent.

H. As used in this section, "law-enforcement officer" means (i) any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth; (ii) any member of an auxiliary police force established pursuant to § 15.2-1731; and (iii) any special conservator of the peace who meets the certification requirements for a law-enforcement officer as set forth in § 15.2-1706. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. As used in this section:

"Copy" includes a facsimile copy.

"Physical presence" includes (i) intentionally maintaining direct visual contact with the petitioner or (ii) unreasonably being within 100 feet from the petitioner's residence or place of employment.

K. No fee shall be charged for filing or serving any petition or order pursuant to this section.

L. Except as provided in § 16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court.

M. Upon issuance of an emergency protective order, the clerk of court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.

1991, c. 715; 1992, c. 742; 1994, c. 907; 1996, c. 866; 1997, c. 603; 1998, cc. 677, 684; 1999, c. 807; 2001, c. 474; 2002, cc. 508, 706, 810, 818; 2007, cc. 396, 661; 2008, cc. 73, 246; 2009, c. 732; 2011, cc. 445, 480; 2012, cc. 637, 827; 2014, cc. 346, 779, 797; 2016, c. 455; 2018, c. 652.

§ 16.1-254. Responsibility for and limitation on transportation of children.

A. The detention home having custody or responsibility for supervision of a child pursuant to §§ 16.1-246, 16.1-247, 16.1-248.1, 16.1-249, and 16.1-250 shall be responsible for transportation of the child to all local medical appointments, dental appointments, psychological and psychiatric evaluations. Transportation of youth to special placements pursuant to § 16.1-286 shall be the responsibility of the court service unit.

B. However, the chief judge of the juvenile and domestic relations district court, on the basis of guidelines approved by the Board, shall designate the appropriate agencies in each county, city and town, other than the Department of State Police, to be responsible for (i) the transportation of violent and disruptive children and (ii) the transportation of children to destinations other than those set forth in subsection A of this section, pursuant to §§ 16.1-246, 16.1-247, 16.1-248.1, 16.1-249, and 16.1-250, and as otherwise ordered by the judge.

No child shall be transported with adults suspected of or charged with criminal acts.

Code 1950, § 16.1-196; 1956, c. 555; 1958, c. 344; 1971, Ex. Sess., c. 109; 1973, c. 440; 1974, c. 358; 1977, c. 559; 1979, c. 202; 1990, cc. 629, 673.

§ 16.1-255. Limitation on issuance of detention orders for juveniles; appearance by juvenile.

No detention order shall be issued for any juvenile except when authorized by the judge or intake officer of a juvenile court or by a magistrate as provided in § 16.1-256.

In matters involving the issuance of detention orders each state or local court service unit shall ensure the capability of a prompt response by an intake officer who is either on duty or on call.

A child may appear before an intake officer either (i) by personal appearance before the intake officer or (ii) by the use of two-way electronic video and audio communication. All communications and proceedings shall be conducted in the same manner and the intake officer shall have the same powers as if the appearance were in person. Any documents filed may be transmitted by facsimile and the facsimile and any signatures thereon shall serve, for all purposes, as an original document. Any two-way electronic video and audio communication system used shall comply with the provisions of subsection B of § 19.2-3.1.

1977, c. 559; 1985, c. 260; 1996, cc. 755, 914; 1997, c. 862; 2002, c. 700.

§ 16.1-256. Limitations as to issuance of warrants for juveniles; detention orders.

No warrant of arrest shall be issued for any juvenile by a magistrate, except as follows:

1. As provided in § 16.1-260 on appeal from a decision of an intake officer to refuse to authorize a petition based solely upon a finding that no probable cause exists; or

2. Upon a finding of probable cause to believe that the child is in need of services or is a delinquent, when (i) the court is not open and (ii) the judge and the intake officer of the juvenile and domestic relations district court are not reasonably available. For purposes of this section, the phrase "not reasonably available" means that neither the judge nor the intake officer of the juvenile and domestic relations district court could be reached after the appearance by the juvenile before a magistrate or that neither could arrive within one hour after he was contacted.

When a magistrate is authorized to issue a warrant pursuant to subdivision 2, he may also issue a detention order, if the criteria for detention set forth in § 16.1-248.1 have been satisfied.

Warrants issued pursuant to this section shall be delivered forthwith to the juvenile court.

Code 1950, § 16.1-195; 1956, c. 555; 1958, c. 344; 1973, c. 440; 1977, c. 559; 1979, c. 701; 1980, c. 234; 1981, c. 184; 1983, c. 349; 1986, c. 295; 1996, cc. 755, 914; 2021, Sp. Sess. I, c. 30.

§ 16.1-257. Interference with or obstruction of officer; concealment or removal of child.

No person shall interfere with or obstruct any officer, juvenile probation officer or other officer or employee of the court in the discharge of his duties under this law, nor remove or conceal or cause to be removed or concealed any child in order that he or she may not be brought before the court, nor interfere with or remove or attempt to remove any child who is in the custody of the court or of an officer or who has been lawfully committed under this law. Any person willfully violating any provision of this section is guilty of a Class 1 misdemeanor.

Code 1950, § 16.1-191; 1956, c. 555; 1977, c. 559.

§ 16.1-258. Bonds and forfeitures thereof.

All bonds and other undertakings taken and approved by any judicial officer as defined in § 19.2-119, either for the appearance of any person or for the performance of any other duty or undertaking set forth in the bond, shall be valid and enforceable even if the principal in the bond shall be a person under eighteen years of age. In the event of a failure upon the part of the principal or sureties in any bond taken in such court to faithfully carry out and discharge the undertakings of such bond, the judge shall have the right to declare the bond forfeited in accordance with § 19.2-143. The complainant in nonsupport cases shall not be required to furnish an indemnifying bond.

Code 1950, § 16.1-189; 1956, c. 555; 1973, c. 440; 1977, c. 559; 1986, c. 26.

Article 5 - INTAKE, PETITION AND NOTICE

§ 16.1-259. Procedure in cases of adults.

A. In cases where an adult is charged with violations of the criminal law pursuant to subsection I or J of § 16.1-241, the procedure and disposition applicable in the trial of such cases in general district court shall be applicable to trial in juvenile court. The provisions of this law shall govern in all other cases involving adults.

B. Proceedings in cases of adults may be instituted on petition by any interested party, or on a warrant issued as provided by law, or upon the court's own motion.

C. Proceedings in cases of adults under the age of 21 who are alleged to have committed, before attaining the age of 18, an offense that would be a crime if committed by an adult shall be commenced by the filing of a petition.

D. Proceedings for violations of probation or parole in cases of adults under the age of 21 where jurisdiction is retained pursuant to § 16.1-242 shall be commenced by the filing of a petition.

Code 1950, § 16.1-186; 1956, c. 555; 1977, c. 559; 1986, c. 95; 2016, c. 626.

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests, and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk; (ii) designated nonattorney employees of the Department of Social Services may complete, sign, and file petitions and motions relating to the establishment, modification, or enforcement of support on forms approved by the Supreme Court of Virginia with the clerk; (iii) designated nonattorney employees of a local department of social services may complete, sign, and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, and motions for a rule to show cause; and (iv) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision, or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services in accordance with the provisions of Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify, or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement. If a petitioner is seeking to establish child support, the intake officer shall provide the petitioner information on the possible availability of medical assistance through the Family Access to Medical Insurance Security (FAMIS) plan or other government-sponsored coverage through the Department of Medical Assistance Services.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance

were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision, or delinquent only if the juvenile (a) is not alleged to have committed a violent juvenile felony or (b) has not previously been proceeded against informally or adjudicated delinquent for an offense that would be a felony if committed by an adult. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is delinquent for an offense that would be a felony if committed by an adult shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated delinquent for an offense that would be a felony if committed by an adult.

If a juvenile is alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 and the attendance officer has provided documentation to the intake officer that the relevant school division has complied with the provisions of § 22.1-258, then the intake officer shall file a petition with the court. The intake officer may defer filing the petition and proceed informally by developing a truancy plan, provided that (1) the juvenile has not previously been proceeded against informally or adjudicated in need of supervision on more than two occasions for failure to comply with compulsory school attendance as provided in § 22.1-254 and (2) the immediately previous informal action or adjudication occurred at least three calendar years prior to the current complaint. The juvenile and his parent or parents, guardian, or other person standing in loco parentis must agree, in writing, for the development of a truancy plan. The truancy plan may include requirements that the juvenile and his parent or parents, guardian, or other person standing in loco parentis participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as necessary to ensure the juvenile's compliance with compulsory school attendance as provided in § 22.1-254. The intake officer may refer the juvenile to the appropriate public agency for the purpose of developing a truancy plan using an interagency interdisciplinary team approach. The team may include qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit, and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. If at the end of the deferral period the juvenile has not successfully completed the truancy plan or the truancy program, then the intake officer shall file the petition.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, in need of supervision, or delinquent, the intake officer shall (A) develop a plan for the juvenile, which may include restitution, the performance of community service, or on a complaint alleging that a child has committed a delinquent act other than an act that would be a felony or a Class 1 misdemeanor if committed by an adult and with the consent of the juvenile's parent or legal guardian, referral to a youth justice diversion program established pursuant to § 16.1-309.11, based upon community resources and the circumstances which resulted in the complaint, (B) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (C) advise the juvenile and the juvenile's parent, guardian, or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, or in the case of a referral to a youth justice diversion program established pursuant to § 16.1-309.11, that any subsequent report from the youth justice diversion program alleging that the juvenile failed to comply with the youth justice diversion program's sentence within 180 days of the sentencing date, may result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation, or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned, or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian, or other person standing in loco parentis is entitled to treatment, rehabilitation, or other services which are required by law, (iv) family abuse has occurred and a protective order is being sought pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, or (v) an act of violence, force, or threat has occurred, a protective order is being sought pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, and either the alleged victim or the respondent is a juvenile. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision, or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition. The intake officer shall provide to a person seeking a protective order pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1 a written explanation of the conditions, procedures and time limits applicable to the issuance of protective orders pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1. If the person is seeking a protective order pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10, the intake officer shall provide a written explanation of the conditions, procedures, and time limits applicable to the issuance of protective orders pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10.

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When

the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility, or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, when such refusal is based solely upon a finding that no probable cause exists, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. The application for a warrant to the magistrate shall be filed within 10 days of the issuance of the written notification. The written notification shall indicate that the intake officer made a finding that no probable cause exists and shall provide notice that the complainant has 10 days to apply for a warrant to the magistrate. The complainant shall provide the magistrate with a copy of the written notification upon application to the magistrate. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony when such refusal is based upon a finding that (i) probable cause exists, but that (ii) the matter is appropriate for diversion, his decision is final and the complainant shall not have a right to apply to a magistrate for a warrant.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

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

G. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.), the intake officer shall file a report with the division superintendent of the school division in which any student who is the subject of a petition alleging that such student who is a juvenile has committed an act, wherever committed, which would be a crime if committed by an adult, or that such student who is an adult has committed a crime and is alleged to be within the jurisdiction of the court. The report shall notify the division superintendent of the filing of the petition and the nature of the offense, if the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), 6.1 (§ 18.2-307.1 et seq.), or 7 (§ 18.2-308.1 et seq.) of Chapter 7 of Title 18.2;

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

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

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

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

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

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

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

9. Robbery pursuant to § 18.2-58;

10. Prohibited criminal street gang activity pursuant to § 18.2-46.2;

11. Recruitment of other juveniles for a criminal street gang activity pursuant to § 18.2-46.3;

12. An act of violence by a mob pursuant to § 18.2-42.1;

13. Abduction of any person pursuant to § 18.2-47 or 18.2-48; or

14. A threat pursuant to § 18.2-60.

The failure to provide information regarding the school in which the student who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

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

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

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

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

3. In the case of a misdemeanor violation of § 18.2-266, 18.2-266.1, or 29.1-738 or the commission of any other alcohol-related offense, provided that the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent

or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8, 16.1-278.8:01, or 16.1-278.9. If the juvenile so charged with a violation of § 18.2-51.4, 18.2-266, 18.2-266.1, 18.2-272, or 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation is to be tried. When a violation of § 4.1-305 is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided that such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation of § 4.1-305 is served, the officer shall also serve upon the juvenile written notice of the right to have the charge referred to intake on a form approved by the Supreme Court and make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

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

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

Code 1950, § 16.1-164; 1956, c. 555; 1972, cc. 672, 835; 1973, c. 440; 1977, c. 559; 1979, c. 701; 1982, c. 91; 1983, c. 349; 1985, c. 488; 1986, c. 381; 1987, cc. 203, 632; 1988, cc. 792, 803; 1990, c. 742; 1991, cc. 496, 511, 534; 1992, cc. 502, 527, 542; 1993, c. 981; 1995, cc. 347, 429; 1996, cc. 755, 914; 1997, c. 862; 1999, cc. 54, 526, 952; 2002, c. 747; 2003, c. 587; 2004, cc. 105, 255, 309, 416, 517, 558; 2006, c. 677; 2008, cc. 136, 845; 2009, cc. 385, 726; 2010, c. 742; 2011, cc. 384, 410, 825; 2012, c. 637; 2013, c. 746; 2014, cc. 674, 719; 2016, c. 704; 2018, cc. 281, 312; 2019, cc. 106, 206; 2020, cc. 753, 1285, 1286; 2021, Sp. Sess. I, cc. 30, 206, 457, 550, 551.

§ 16.1-261. Statements made at intake or mental health screening and assessment.

Statements made by a child to the intake officer or probation officer during the intake process or during a mental health screening or assessment conducted pursuant to § 16.1-248.2 and prior to a hearing on the merits of the petition filed against the child, shall not be admissible at any stage of the proceedings.

1977, c. 559; 1996, cc. 755, 914.

§ 16.1-262. Form and content of petition.

A. The petition shall contain the facts below indicated:

"Commonwealth of Virginia, In re _____ (name of child)" a child under eighteen years of age.

"In the Juvenile and Domestic Relations District Court of the county (or city) of _____ "

1. Statement of name, age, date of birth, if known, and residence of the child.

2. Statement of names and residence of his parents, guardian, legal custodian or other person standing in loco parentis and spouse, if any.

3. Statement of names and residence of the nearest known relatives if no parent or guardian can be found.

4. Statement of the specific facts which allegedly bring the child within the purview of this law. If the petition alleges a delinquent act, it shall make reference to the applicable sections of the Code which designate the act a crime.

5. Statement as to whether the child is in custody, and if so, the place of detention or shelter care, and the time the child was taken into custody, and the time the child was placed in detention or shelter care.

B. If the subject of the petition is an adult, the petition shall not state or include the name of or any information concerning the parents, guardians, legal custodian, or person standing in loco parentis of the adult subject of the petition except as may be necessary to state the conduct alleged in the petition.

C. If any of the facts herein required to be stated are not known by the petitioner, the petition shall so state. The petition shall be verified, except that petitions filed under § 63.2-1237 may be signed by the petitioner's counsel, and may be upon information.

In accordance with § 16.1-69.32, the Supreme Court may formulate rules for the form and content of petitions in the juvenile court concerning matters related to the custody, visitation or support of a child and the protection, support or maintenance of an adult where the provisions of this section are not appropriate.

Code 1950, § 16.1-165; 1956, c. 555; 1977, c. 559; 1979, c. 615; 1984, c. 631; 1995, cc. 772, 826; 2000, c. 830; 2016, c. 626.

§ 16.1-263. Summonses.

A. After a petition has been filed, the court shall direct the issuance of summonses, one directed to the juvenile, if the juvenile is twelve or more years of age, and another to at least one parent, guardian, legal custodian, or other person standing in loco parentis, and such other persons as appear to the court to be proper or necessary parties to the proceedings.

After a petition has been filed against an adult pursuant to subsection C or D of § 16.1-259, the court shall direct the issuance of a summons against the adult.

The summons shall require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned and such person is not a

parent of the juvenile in question, a parent shall also be served with a summons. The court may direct that other proper or necessary parties to the proceedings be notified of the pendency of the case, the charge and the time and place for the hearing.

Any such summons shall be deemed a mandate of the court, and willful failure to obey its requirements shall subject any person guilty thereof to liability for punishment for contempt. Upon the failure of any person to appear as ordered in the summons, the court shall immediately issue an order for such person to show cause why he should not be held in contempt.

The parent, guardian, legal custodian, or other person standing in loco parentis shall not be summoned to appear or be punished for failure to appear in cases of adults who are brought before the court pursuant to subsection C or D of § 16.1-259 unless such person is summoned as a witness.

B. The summons shall advise the parties of their right to counsel as provided in § 16.1-266. A copy of the petition shall accompany each summons for the initial proceedings. The summons shall include notice that in the event that the juvenile is committed to the Department or to a secure local facility, at least one parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for treatment of the juvenile pursuant to § 16.1-290. Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date, and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has notified the court that he no longer represents such party.

C. The judge may endorse upon the summons an order directing a parent or parents, guardian, or other custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

D. A party, other than the juvenile, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

E. No such summons or notification shall be required if the judge shall certify on the record that (i) the identity of a parent or guardian is not reasonably ascertainable or (ii) in cases in which it is alleged that a juvenile has committed a delinquent act, crime, status offense, or traffic infraction or is in need of services or supervision, the location, or in the case of a parent or guardian located outside of the Commonwealth the location or mailing address, of a parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. In cases referred to in clause (ii), an affidavit of a law-enforcement officer or juvenile probation officer that the location of a parent or guardian is not reasonably ascertainable shall be sufficient evidence of this fact, provided that there is no other evidence before the court which would refute the affidavit.

Code 1950, §§ 16.1-166, 16.1-172; 1956, c. 555; 1974, c. 620; 1975, c. 128; 1977, c. 559; 1978, cc. 613, 740; 1996, cc. 755, 914; 1997, c. 441; 1999, c. 952; 2004, c. 573; 2016, c. 626; 2021, Sp. Sess. I, c. 283.

§ 16.1-264. Service of summons; proof of service; penalty.

A. If a party designated in subsection A of § 16.1-263 to be served with a summons can be found within the Commonwealth, the summons shall be served upon him in person or by substituted service as prescribed in subdivision 2 of § 8.01-296.

If a party designated to be served in § 16.1-263 is without the Commonwealth but can be found or his address is known, or can with reasonable diligence be ascertained, service of summons may be made either by delivering a copy thereof to him personally or by mailing a copy thereof to him by certified mail return receipt requested.

If after reasonable effort a party other than the person who is the subject of the petition cannot be found or his post-office address cannot be ascertained, whether he is within or without the Commonwealth, the court may order service of the summons upon him by publication in accordance with the provisions of §§ 8.01-316 and 8.01-317.

A1. Any person who is subject to an emergency protective order issued pursuant to § 16.1-253.4 or 19.2-152.8 shall have been personally served with the protective order if a law-enforcement officer, as defined in § 9.1-101, personally provides to such person a notification of the issuance of the order, which shall be on a form approved by the Executive Secretary of the Supreme Court of Virginia, provided that all of the information and individual requirements of the order are included on the form. The officer making service shall enter or cause to be entered the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court.

B. Service of summons may be made under the direction of the court by sheriffs, their deputies and police officers in counties and cities or by any other suitable person designated by the court. However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy.

C. Proof of service may be made by the affidavit of the person other than an officer designated in subsection B hereof who delivers a copy of the summons to the person summoned, but if served by a state, county or municipal officer his return shall be sufficient without oath.

D. The summons shall be considered a mandate of the court and willful failure to obey its requirements shall subject any person guilty thereof to liability for punishment as for contempt.

Code 1950, §§ 16.1-167 to 16.1-170; 1956, c. 555; 1977, c. 559; 1984, c. 594; 1987, c. 632; 1991, c. 62; 2004, c. 588; 2011, c. 482.

§ 16.1-265. Subpoena; attorney-issued subpoena.

Upon application of a party and pursuant to the Rules of Supreme Court of Virginia for the issuance of subpoenas, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas

requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing.

Subpoenas duces tecum for medical records shall be subject to the provisions of §§ 8.01-413 and 32.1-127.1:03 except that no separate fee shall be imposed. A subpoena may also be issued in a civil proceeding by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena shall be on a form approved by the Committee on District Courts, signed by the attorney as if a pleading, and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas issued by a clerk shall apply mutatis mutandis, except that attorneys may not issue subpoenas in those cases in which they may not issue a summons as provided in § 8.01-407. When an attorney-at-law transmits one or more subpoenas or subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply. A sheriff shall not be required to serve an attorney-issued subpoena that is not issued at least five business days prior to the date production of evidence is required.

If the time for compliance with a subpoena issued by an attorney is less than 14 days after service of the subpoena, the person to whom it is directed may serve upon the party issuing the subpoena a written objection setting forth any grounds therefor. If objection is made, the party on whose behalf the subpoena was issued and served shall not be entitled to compliance, except pursuant to an order of the court, but may, upon notice to the person to whom the subpoena was directed, move for an order to compel compliance. Upon such timely motion, the court may quash, modify, or sustain the subpoena. The release of a person to whom an attorney-issued subpoena is directed shall be governed by the provisions of § 8.01-407.

1977, c. 559; 2000, c. 813; 2004, c. 335; 2023, c. 92.

Article 6 - APPOINTMENT OF COUNSEL

§ 16.1-266. Appointment of counsel and guardian ad litem.

A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or § 63.2-1230, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

B. Prior to the detention hearing held pursuant to § 16.1-250, the court shall appoint a qualified and competent attorney-at-law to represent the child unless an attorney has been retained and appears on behalf of the child. For the purposes of appointment of counsel for the detention hearing held pursuant to § 16.1-250 only, a child's indigence shall be presumed. Nothing in this subsection shall prohibit a judge from releasing a child from detention prior to appointment of counsel.

C. Subsequent to the detention hearing, if any, and prior to the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services, in need of supervision or delinquent, such child and his parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § 16.1-267 and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or

2. Request that the court appoint counsel, provided that before counsel is appointed or the court continues any appointment previously made pursuant to subsection B, the court shall determine that the child is indigent within the contemplation of the law pursuant to guidelines set forth in § 19.2-159 by requiring 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, and upon determination of indigence the court shall appoint an attorney from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to represent the child; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, and such waiver is consistent with the interests of the child. Such written waiver shall be in accordance with law and shall be filed with the court records of the case. A child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive such right only after he consults with an attorney and the court determines that his waiver is free and voluntary. 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.

D. A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in subdivision A 2a of § 16.1-241 and prior to a hearing at which a parent could be subjected to the loss of residual parental rights. In addition, prior to the hearing by the court of any case involving any other adult charged with abuse or neglect of a child, this adult shall be informed of his right to counsel. This adult and the parent or guardian shall be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held.

Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to § 16.1-281, a foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing pursuant to § 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or guardian.

E. In those cases described in subsections A, B, C and D, which in the discretion of the court require counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult party in addition to the representation provided in those subsections, a discreet and competent attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

F. In all other cases which in the discretion of the court require counsel or a guardian ad litem, or both, to represent the child or children or the parent or guardian, discreet and competent attorneys-at-law may be appointed by the court. However, in cases where the custody of a child or children is the subject of controversy or requires determination and each of the parents or other persons claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent the interests of the child or children unless the court finds, at any stage in the proceedings in a specific case, that the interests of the child or children are not otherwise adequately represented.

G. Any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health care provider shall permit a guardian ad litem or counsel for the child appointed pursuant to this section to inspect and copy, without the consent of the child or his parents, any records relating to the child whom the guardian or counsel represents upon presentation by him of a copy of the court order appointing him or a court order specifically allowing him such access. Upon request therefor by the guardian ad litem or counsel for the child made at least 72 hours in advance, a mental health care provider shall make himself available to conduct a review and interpretation of the child's treatment records which are specifically related to the investigation. Such a request may be made in lieu of or in addition to inspection and copying of the records.

Code 1950, §§ 16.1-173, 63.1-248.12; 1956, c. 555; 1966, c. 709; 1968, c. 581; 1970, c. 87; 1973, c. 440; 1974, c. 513; 1975, cc. 341, 465, 559; 1977, c. 559; 1980, c. 572; 1982, c. 451; 1984, c. 709; 1985, c. 260; 1987, c. 632; 1994, c. 36; 1997, c. 790; 2002, c. 687; 2003, c. 98; 2004, cc. 66, 437, 884, 921, 1014; 2005, c. 427.

§ 16.1-266.1. Standards for attorneys appointed as guardians ad litem; list of qualified attorneys; attorneys appointed for parents or guardians.

A. On or before January 1, 1995, the Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall adopt standards for attorneys appointed as guardians ad litem pursuant to § 16.1-266. The standards shall, insofar as practicable, take into consideration the following criteria: (i) license or permission to practice law in Virginia, (ii) current training in the roles,

responsibilities and duties of guardian ad litem representation, (iii) familiarity with the court system and general background in juvenile law, and (iv) demonstrated proficiency in this area of the law.

B. The Judicial Council shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as guardians ad litem based upon the standards and shall make the names available to the courts. If no attorney who is on the list is reasonably available, a judge in his discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

C. Counsel appointed for a parent or guardian pursuant to subsection D of § 16.1-266 shall be selected from the list of attorneys who are qualified to serve as guardians ad litem. If no attorney who is on the list is reasonably available or appropriate considering the circumstances of the parent or case, a judge in his discretion may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

1994, c. 36; 1995, c. 273; 2016, cc. 182, 509.

§ 16.1-266.2. Appointment of pro bono counsel by judges of the First and Second Judicial District in certain cases.

The judges of the juvenile and domestic relations district court of the First and Second Judicial District are authorized to appoint pro bono counsel for alleged victims in family abuse cases in which the court is authorized to issue a preliminary protective order under § 16.1-253.1, or an emergency protective order under § 16.1-253.4. Such counsel shall have no prosecutorial authority except as granted in writing by the attorney for the Commonwealth for the jurisdiction in which the representation is to occur.

Any attorney appointed under the provisions of this section shall be a volunteer and serve without compensation and shall be subject to any rules adopted by the court and approved by the Virginia Supreme Court providing for the establishment and conduct of a project providing pro bono services to victims of family abuse.

1995, c. 806.

§ 16.1-267. Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to subsection A of § 16.1-266 and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parents for such legal services in the maximum amount of that awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court.

When the court appoints counsel to represent a child pursuant to subsection B or C of § 16.1-266 and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount

shall not exceed $100 if the action is in circuit court or the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163.

C. 1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to § 16.1-266, the court shall order the parent, or other party with a legitimate interest who has filed a petition in such proceeding, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court determines to be indigent pursuant to § 19.2-159 shall be required to pay reimbursement except where the court finds good cause to do so. The Executive Secretary of the Supreme Court shall administer the guardian ad litem program and shall report August 1 and January 1 of each year to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and Appropriations on the amounts paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management actions taken to further enhance savings under this program.

2. For good cause shown, or upon the failure by the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem pursuant to § 16.1-266.1, the court may adjust the cost sought by the guardian ad litem of such services.

3. For the purposes of this subsection, "other party with a legitimate interest" shall not include child welfare agencies or local departments of social services.

Code 1950, § 16.1-173; 1956, c. 555; 1966, c. 709; 1968, c. 581; 1970, c. 87; 1973, c. 440; 1974, c. 513; 1975, cc. 465, 559; 1977, c. 559; 1981, c. 213; 1984, c. 709; 1986, c. 425; 1993, c. 344; 2004, cc. 342, 437; 2017, c. 676; 2018, c. 688.

§ 16.1-268. Order of appointment.

The order of appointment of counsel or a guardian ad litem or both pursuant to § 16.1-266 shall be filed with and become a part of the record of such proceeding. Any attorney so appointed shall represent the child or parent, guardian, or other adult at any such hearing and at all other stages of the proceeding unless relieved or replaced in the manner provided by law. Any attorney appointed to represent the child or parent, guardian, or other adult pursuant to this section may continue to represent such child or parent, guardian, or other adult upon appeal to the circuit court unless relieved or replaced in the manner provided by law.

1977, c. 559; 2023, c. 623.

Article 7 - TRANSFER AND WAIVER

§ 16.1-269. Repealed.

Repealed by Acts 1994, cc. 859 and 949.

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

A. Except as provided in subsections B and C, if a juvenile 14 years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

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

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

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

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

a. The juvenile's age;

b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than 20 years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

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

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

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

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

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

h. The juvenile's school record and education;

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

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

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider any of the factors specified in subdivision 4.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile 16 years of age or older is charged with murder in violation of § 18.2-31, 18.2-32 or 18.2-40, or aggravated malicious wounding in violation of § 18.2-51.2. If the juvenile is 14 years of age or older, but less than 16 years of age, then the court may proceed, on motion of the attorney for the Commonwealth, as provided in subsection A.

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 16 years of age or older is charged with murder in violation of § 18.2-33; 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 § 18.2-54.2; robbery in violation of subdivision B 1 or 2 of § 18.2-58 or carjacking in violation of § 18.2-58.1; rape in violation of § 18.2-61; forcible sodomy in violation of § 18.2-67.1; object sexual penetration in violation of § 18.2-67.2; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance in violation of § 18.2-248 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248 provided the adjudications occurred after the juvenile was at least 16 years of age; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of § 18.2-248.03 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248.03 provided the adjudications occurred after the juvenile was at least 16 years of age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in violation of § 18.2-248.5 if the juvenile has been

previously adjudicated delinquent on two or more occasions of violating § 18.2-248.5 provided the adjudications occurred after the juvenile was at least 16 years of age, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. Prior to giving written notice of his intent to proceed pursuant to this subsection, the attorney for the Commonwealth shall submit a written request to the director of the court services unit to complete a report as described in subsection B of § 16.1-269.2 unless waived by the juvenile and his attorney or other legal representative. The report shall be filed with the court and mailed or delivered to (i) the attorney for the Commonwealth and (ii) counsel for the juvenile, or, if the juvenile is not represented by counsel, to the juvenile and a parent, guardian, or other person standing in loco parentis with respect to the juvenile, within 21 days of the date of the written request. After reviewing the report, if the attorney for the Commonwealth still intends to proceed pursuant to this subsection, he shall then provide the written notice of such intent, which shall include affirmation that he reviewed the report. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, if he elects to withdraw the notice prior to certification of the charge to the grand jury, or if the juvenile is 14 years of age or older, but less than 16 years of age, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

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

If the court finds that the juvenile was not (i) for the purposes of subsection A, 14 years of age or older or (ii) for purposes of subsection B or C, 16 years of age or older, at the time of the alleged commission of the offense or that the conditions specified in subdivision A 1, 2, or 3 have not been met, the case shall proceed as otherwise provided for by law.

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

1994, cc. 859, 949; 1996, cc. 755, 914; 1997, c. 862; 2012, cc. 476, 507, 772; 2020, cc. 987, 988; 2021, Sp. Sess. I, c. 534.

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

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

B. Prior to a transfer hearing pursuant to subsection A of § 16.1-269.1 or a preliminary hearing pursuant to subsection C of § 16.1-269.1, a study and report to the court, in writing, relevant to the factors set out in subdivision A 4 of § 16.1-269.1, as well as an assessment of any affiliation with a criminal street gang as defined in § 18.2-46.1, shall be made by the probation services or other qualified agency designated by the court. 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. 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 which are available to the court. The court shall not consider the report until a finding has been made concerning probable cause. If the court so orders, the study and report may be expanded to include matters provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

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

1994, cc. 859, 949; 1999, c. 350; 2005, cc. 590, 843; 2020, cc. 987, 988.

§ 16.1-269.3. Retention by juvenile court; appeal.

If a case is not transferred following a transfer hearing or is not certified following a probable cause hearing, the judge who conducted the hearing shall not, over the objection of any interested party, preside at the adjudicatory hearing on the petition, but rather it shall be presided over by another judge of that court. If the attorney for the Commonwealth deems it to be in the public interest, and the juvenile is fourteen years of age or older he may, within ten days after the juvenile court's final decision to retain the case in accordance with subsection A of § 16.1-269.1, file a notice of appeal of the decision to the appropriate circuit court. A copy of such notice shall be furnished at the same time to the counsel for the juvenile.

1994, cc. 859, 949; 1996, cc. 755, 914.

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

If the juvenile court transfers the case pursuant to subsection A of § 16.1-269.1, the juvenile may, within ten days after the juvenile court's final decision, file a notice of appeal of the decision to the

appropriate circuit court. A copy of the notice shall be furnished at the same time to the attorney for the Commonwealth.

1994, cc. 859, 949; 1996, cc. 755, 914.

§ 16.1-269.5. Placement of juvenile.

The juvenile court may order placement of the transferred juvenile in either a local correctional facility as approved by the State Board of Local and Regional Jails pursuant to the limitations of subsections D and E of § 16.1-249 or a juvenile detention facility.

1994, cc. 859, 949; 1995, cc. 746, 798, 802; 2010, c. 739; 2020, c. 759.

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

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

B. The circuit court, when practicable, shall, within 45 days after receipt of the case from the juvenile court pursuant to subsection A of § 16.1-269.1, (i) if either the juvenile or the attorney for the Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the juvenile court had sufficient evidence to find probable cause; and (ii) enter an order either remanding the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an indictment. A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings. However, in cases where a charge has been certified by the juvenile court to the grand jury pursuant to subsection B or C of § 16.1-269.1, the attorney for the Commonwealth may seek an indictment upon such charge and any ancillary charge without obtaining an order of the circuit court advising him that he may do so.

C. The circuit court order advising the attorney for the Commonwealth that he may seek an indictment shall divest the juvenile court of its jurisdiction over the case as well as the juvenile court's jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the juvenile following transfer or certification and trial as an adult, the circuit court shall issue an order terminating

the juvenile court's jurisdiction over that juvenile with respect to any future criminal acts alleged to have been committed by such juvenile and with respect to any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction. However, such an order terminating the juvenile court's jurisdiction shall not apply to any allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and domestic relations district court if the defendant were an adult. Upon receipt of the order terminating the juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending petitions of delinquency for proceedings in the appropriate general district court.

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

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

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

1994, cc. 859, 949; 1996, cc. 755, 914; 1997, c. 862; 2003, c. 144; 2004, c. 468; 2010, c. 739.

§ 16.1-270. Waiver of jurisdiction of juvenile court in certain cases.

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

Code 1950, § 16.1-176.2; 1973, c. 440; 1977, c. 559; 1994, cc. 859, 949.

§ 16.1-271. Subsequent offenses by juvenile.

Conviction of a juvenile as an adult pursuant to the provisions of this chapter shall preclude the juvenile court from taking jurisdiction of such juvenile for subsequent offenses committed by that juvenile.

Any juvenile who is tried and convicted in a circuit court as an adult under the provisions of this article shall be considered and treated as an adult in any criminal proceeding resulting from any alleged future criminal acts and any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction.

All procedures and dispositions applicable to adults charged with such a criminal offense shall apply in such cases, including, but not limited to, arrest; probable cause determination by a magistrate or grand jury; the use of a warrant, summons, or capias instead of a petition to initiate the case; adult bail; preliminary hearing and right to counsel provisions; trial in a court having jurisdiction over adults; and

trial and sentencing as an adult. The provisions of this article regarding a transfer hearing shall not be applicable to such juveniles.

1977, c. 559; 1989, c. 675; 1990, c. 668; 1994, cc. 859, 949; 2007, c. 221.

§ 16.1-272. Power of circuit court over juvenile offender.

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge, the court shall fix the sentence without the intervention of a jury. Nothing in this subsection shall be construed to require a court to review the results of an investigation completed pursuant to § 16.1-273.

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

2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

3. Notwithstanding any other provision of law, if the juvenile is convicted of any felony, the court may in its discretion depart from any mandatory minimum sentence required by law or suspend any portion of an otherwise applicable sentence.

4. 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.

B. 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.

C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of §

18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

D. In any case in which a juvenile is not sentenced as a juvenile under this chapter, the court shall, in addition to considering any other factor and prior to imposing a sentence, consider (i) the juvenile's exposure to adverse childhood experiences, early childhood trauma, or any child welfare agency and (ii) the differences between juvenile and adult offenders.

E. A juvenile sentenced pursuant to clause (i) of subdivision A 1 shall be eligible to earn sentence credits in the manner prescribed by § 53.1-202.2 for the portion of the sentence served as a serious juvenile offender under § 16.1-285.1.

F. 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 court service unit in the same locality as the juvenile court to which the case had been transferred.

Code 1950, § 16.1-177; 1956, c. 555; 1977, c. 559; 1994, c. 362; 1996, cc. 755, 914; 2000, c. 793; 2002, c. 511; 2003, c. 584; 2005, c. 590; 2007, c. 460; 2008, c. 517; 2014, cc. 20, 249; 2020, c. 396.

§ 16.1-272.1. Claim of error to be raised within one year.

In addition to any other curative provisions, waivers, procedural defaults, or requirements for timely objection, including but not limited to those in subsection J of § 16.1-241, subsection E of § 16.1-269.1 and subsection E of § 16.1-269.6, any claim of error or defect under this chapter, jurisdictional or otherwise, that is not raised within one year from the date of final judgment of the circuit court or one year from the effective date of this act, whichever is later, shall not constitute a ground for relief in any judicial proceeding.

2000, c. 418.

Article 8 - Adjudication

§ 16.1-273. Court may require investigation of social history and preparation of victim impact statement.

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law, or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which (i) shall include a drug screening and (ii) may, and for the purposes of subdivision A 14 or 17 of § 16.1-278.8 shall, include a social history of the physical, mental, and social conditions, including an assessment of any affiliation with a criminal street gang as defined in § 18.2-46.1, and personality of the child and the facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000, which would be (a) a felony if committed by an adult, or (b) a violation under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§

18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2 misdemeanor if committed by an adult, the court shall order the juvenile to undergo a drug screening. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice or by a locally operated court services unit or by an individual employed by or currently under contract to such agencies and who is specifically trained to conduct such assessments under the supervision of such counselor.

B. The court also shall, on motion of the attorney for the Commonwealth with the consent of the victim, or may in its discretion, require the preparation of a victim impact statement in accordance with the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant physical, psychological, or economic injury as a result of the violation of law.

Code 1950, § 16.1-164; 1956, c. 555; 1972, cc. 672, 835; 1973, c. 440; 1977, cc. 559, 627; 1993, c. 603; 1998, cc. 783, 840; 1999, cc. 350, 891, 913; 2000, cc. 1020, 1041; 2005, c. 843; 2007, c. 510; 2014, cc. 20, 249; 2020, cc. 1285, 1286; 2021, Sp. Sess. I, cc. 550, 551.

§ 16.1-274. Time for filing of reports; copies furnished to attorneys; amended reports; fees.

A. Whenever any court directs an investigation pursuant to subdivision A of § 16.1-237 or § 16.1-273 or 9.1-153, or an evaluation pursuant to § 16.1-278.5, the probation officer, court-appointed special advocate, or other agency conducting such investigation shall file such report with the clerk of the court directing the investigation. The clerk shall furnish a copy of such report to all attorneys representing parties in the matter before the court no later than 72 hours, and in cases of child custody, 15 days, prior to the time set by the court for hearing the matter. If such probation officer or other agency discovers additional information or a change in circumstance after the filing of the report, an amended report shall be filed forthwith and a copy sent to each person who received a copy of the original report. Whenever such a report is not filed or an amended report is filed, the court shall grant such continuance of the proceedings as justice requires. All attorneys receiving such report or amended report shall return such to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion thereof. However, the chief judge of each juvenile and domestic relations district court may provide for an alternative means of copying and distributing reports or amended reports referenced above.

B. Notwithstanding the provisions of §§ 16.1-69.48:2 and 17.1-275, when the court directs the appropriate local department of social services to conduct supervised visitation or directs the appropriate local department of social services or court services unit to conduct an investigation pursuant to § 16.1-273 or to provide mediation services in matters involving a child's custody, visitation, or support, the court shall assess a fee against the petitioner, the respondent, or both, in accordance with fee schedules established by the appropriate local board of social services when the service is provided by a local department of social services or by a court services unit. The fee schedules shall include (i) standards for determining the paying party's or parties' ability to pay and (ii) a scale of fees based on the paying party's or parties' income and family size and the actual cost of the services provided. The

fee charged shall not exceed the actual cost of the service. The fee shall be assessed as a cost of the case and shall be paid as prescribed by the court to the local department of social services, locally operated court services unit or Department of Juvenile Justice, whichever performed the service, unless payment is waived. The method and medium for payment for such services shall be determined by the local department of social services, Department of Juvenile Justice, or the locally operated court services unit that provided the services.

C. When a local department of social services or any court services unit is requested by another local department or court services unit in the Commonwealth or by a similar department or entity in another state to conduct an investigation involving a child's custody, visitation or support pursuant to § 16.1-273 or, in the case of a request from another state pursuant to a provision corresponding to § 16.1-273, or to provide mediation services, or for a local department of social services to provide supervised visitation, the local department or the court services unit performing the service may require payment of fees prior to conducting the investigation or providing mediation services or supervised visitation.

D. In any matter in which the court appoints a guardian ad litem to represent a child, such guardian ad litem shall conduct an investigation in accordance with the Standards to Govern the Performance of Guardians Ad Litem for Children established by the Judicial Council of Virginia. Prior to the commencement of the dispositional hearing of any such matter, the guardian ad litem shall file with the court, with a copy to all attorneys representing parties to such matter and all parties proceeding pro se in such matter, a certification of the guardian ad litem's compliance with the Standards to Govern the Performance of Guardians Ad Litem for Children established by the Judicial Council of Virginia, specifically addressing compliance with such standards requiring face-to-face contact with the child in such certification. The guardian ad litem shall document the hours spent satisfying such face-to-face contact requirements in such certification, which shall be compensated at the same rate as that for in-court service.

Code 1950, § 16.1-208.1; 1972, c. 111; 1975, c. 286; 1977, c. 559; 1983, c. 174; 1987, c. 5; 1989, c. 725; 1990, c. 752; 1991, cc. 534, 618; 1992, c. 554; 1993, c. 975; 2001, c. 364; 2006, c. 675; 2012, cc. 164, 456; 2020, c. 21; 2022, c. 543.

§ 16.1-274.1. Admission of evidence of juvenile's age.

In any proceeding in a district court or circuit court where a juvenile is alleged to have committed a delinquent act, the Commonwealth shall be permitted to introduce evidence establishing the age of the juvenile at any time prior to adjudication of the case.

1994, c. 913; 1996, cc. 755, 914.

§ 16.1-274.2. Certain education records as evidence.

A. In any proceeding where (i) a juvenile is alleged to have committed a delinquent act that would be a misdemeanor if committed by an adult and whether such act was committed intentionally or willfully by the juvenile is an element of the delinquent act and (ii) such act was committed (a) during school

hours, and during school-related or school-sponsored activities upon the property of a public or private elementary or secondary school or child day center; (b) on any school bus as defined in § 46.2-100; or (c) upon any property, public or private, during hours when such property is solely being used by a public or private elementary or secondary school for a school-related or school-sponsored activity, the juvenile shall be permitted to introduce into evidence as relevant to whether he acted intentionally or willfully any document created prior to the commission of the alleged delinquent act that relates to (a) an Individualized Education Program developed pursuant to the federal Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq.; (b) a Section 504 Plan prepared pursuant to § 504 of the federal Rehabilitation Act of 1973, 29 U.S.C. § 794; (c) a behavioral intervention plan as defined in 8VAC20-81-10; or (d) a functional behavioral assessment as defined in 8VAC20-81-10.

Any such document shall be admitted as evidence of the facts stated therein.

B. At least 10 days prior to the commencement of the proceeding in which a document listed in subsection A will be offered as evidence, the juvenile intending to offer the document shall notify the attorney for the Commonwealth, in writing, of the intent to offer the document and shall provide or make available copies of the document to be introduced.

C. Copies of documents listed in subsection A shall be received as evidence, provided that such copies are authenticated to be true and accurate copies by the custodian thereof, or by the person to whom the custodian reports if they are different. An affidavit signed by the custodian of such documents, or by the person to whom the custodian reports if they are different, stating that such documents are true and accurate copies of such documents shall be valid authentication for the purposes of this section.

D. Upon motion of the juvenile, any document admitted pursuant to this section shall be placed under seal by the court.

2016, c. 726.

§ 16.1-275. Physical and mental examinations and treatment; nursing and medical care.

The juvenile court or the circuit court may cause any juvenile within its jurisdiction under the provisions of this law to be physically examined and treated by a physician or to be examined and treated at a local mental health center. If no such appropriate facility is available locally, the court may order the juvenile to be examined and treated by any physician or psychiatrist or examined by a clinical psychologist. The Commissioner of Behavioral Health and Developmental Services shall provide for distribution a list of appropriate mental health centers available throughout the Commonwealth. Upon the written recommendation of the person examining the juvenile that an adequate evaluation of the juvenile's treatment needs can only be performed in an inpatient hospital setting, the court shall have the power to send any such juvenile to a state mental hospital for not more than 10 days for the purpose of obtaining a recommendation for the treatment of the juvenile. No juvenile sent to a state mental hospital pursuant to this provision shall be held or cared for in any maximum security unit where adults determined to be criminally insane reside; the juvenile shall be kept separate and apart from such

adults. However, the Commissioner of Behavioral Health and Developmental Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff or the public.

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

The juvenile court or the circuit court may cause any juvenile within its jurisdiction who is found to be delinquent for an offense that is eligible for commitment pursuant to subdivision A 14 of § 16.1-278.8 or § 16.1-285.1 to be placed in the temporary custody of the Department of Juvenile Justice for a period of time not to exceed 30 days for diagnostic assessment services after the adjudicatory hearing and prior to final disposition of his or her case. Prior to such a placement, the Department shall determine that the personnel, services and space are available in the appropriate correctional facility for the care, supervision and study of such juvenile and that the juvenile's case is appropriate for referral for diagnostic services.

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

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

Code 1950, § 16.1-190; 1956, c. 555; 1972, c. 354; 1975, c. 430; 1976, c. 321; 1977, c. 559; 1978, c. 739; 1982, c. 636; 1983, c. 358; 1984, c. 44; 1988, cc. 47, 826; 1990, c. 975; 1994, cc. 859, 949; 2004, c. 321; 2009, cc. 813, 840; 2012, cc. 164, 456.

§ 16.1-276. Fees and travel expenses of witnesses.

The judge may authorize the payment of the fees and mileage provided by law in § 19.2-278 of any witness or person summoned or otherwise required to appear at the hearing of any case coming within the jurisdiction of the court, which sum shall be paid by the State Treasurer out of funds appropriated in the general appropriations act to the Supreme Court of Virginia.

Code 1950, § 16.1-171; 1956, c. 555; 1977, c. 559; 1982, c. 636.

§ 16.1-276.1. Repealed.

Repealed by Acts 2002, c. 305.

§ 16.1-276.2. Transportation orders in certain proceedings.

In any proceeding (i) pursuant to subdivisions 2, 4 or 5 of subsection A of § 16.1-241, (ii) pursuant to subsections K or U of § 16.1-241, (iii) involving a child who is alleged to be abused or neglected, or (iv) involving a child who is before the court pursuant to §§ 16.1-281, 16.1-282 or § 16.1-282.1, if the judge finds that the presence at a hearing of a prisoner in a state, local or regional correctional institution is essential to the just adjudication and disposition of the proceeding, the judge may issue an order to the Director of the Department of Corrections or the administrator of the state, local or regional correctional institution to deliver such witness to the sheriff of the jurisdiction of the court issuing the order. Such orders shall be executed in accordance with § 8.01-410. Any such orders shall issue only upon consideration of the importance of the personal appearance of the person.

The party seeking the testimony of such prisoner shall advance a sum sufficient to defray the expenses and compensation of the officers, which the court shall tax as costs. When the party seeking the attendance of the prisoner is an agency of the Commonwealth or when the attendance is sought on motion of the court, no sum shall be advanced to defray the expenses or compensation of the correctional officers and sheriff nor shall any such sum be taxed as costs.

2001, c. 513.

§ 16.1-276.3. Use of telephonic communication systems or electronic video and audio communication systems to conduct hearing.

Notwithstanding any other provision of law, in any civil proceeding under this chapter in which a party or witness is incarcerated or when otherwise authorized by the court, the court may, in its discretion, conduct any hearing using a telephonic communication system or an electronic audio and video communication system to provide for the appearance of any parties and witnesses. Any electronic audio and video communication system used to conduct such a hearing shall meet the standards set forth in subsection B of § 19.2-3.1.

2001, c. 513.

§ 16.1-277. Repealed.

Repealed by Acts 1999, c. 889.

§ 16.1-277.01. Approval of entrustment agreement.

A. In any case in which a child has been entrusted pursuant to § 63.2-903 or 63.2-1817 to the local board of social services or to a child welfare agency, a petition for approval of the entrustment agreement by the board or agency:

1. Shall be filed within a reasonable period of time, no later than 89 days after the execution of an entrustment agreement for less than 90 days, if the child is not returned to the caretaker from whom he was entrusted within that period;

2. Shall be filed within a reasonable period of time, not to exceed 30 days after the execution of an entrustment agreement for 90 days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and

3. May be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

The board or agency shall file a foster care plan pursuant to § 16.1-281 to be heard with any petition for approval of an entrustment agreement.

B. Upon the filing of a petition for approval of an entrustment agreement pursuant to subsection A of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § 16.1-266, and shall schedule the matter for a hearing to be held as follows: within 45 days of the filing of a petition pursuant to subdivision A 1, A 2 or A 3, except where an order of publication has been ordered by the court, in which case the hearing shall be held within 75 days of the filing of the petition. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The local board of social services or child welfare agency;

2. The child, if he is 12 years of age or older;

3. The guardian ad litem for the child; and

4. The child's parents, guardian, legal custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. A birth father shall be given notice of the proceedings if he is an acknowledged father pursuant to § 20-49.1, adjudicated pursuant to § 20-49.8, or presumed pursuant to § 63.2-1202, or has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.). An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. Failure to register with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of Chapter 12 of Title 63.2 shall be evidence that the identity of the father is not reasonably ascertainable. The hearing shall be held and an order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, when a petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, a summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264.

The remaining parent's parental rights may be terminated even though that parent has not entered into an entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best interest of the child and that (i) the identity of the parent is not reasonably ascertainable; (ii) the identity and whereabouts of the parent are known or reasonably ascertainable, and the parent is personally served with notice of the termination proceeding pursuant to § 8.01-296 or 8.01-320; (iii) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings by certified or registered mail to the last known address and such parent fails to object to the proceedings within 15 days of the mailing of such notice; or (iv) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings through an order of publication pursuant to §§ 8.01-316 and 8.01-317, and such parent fails to object to the proceedings.

C. At the hearing held pursuant to this section, the court shall hear evidence on the petition filed and shall review the foster care plan for the child filed by the local board or child welfare agency in accordance with § 16.1-281.

D. At the conclusion of the hearing, the court shall make a finding, based upon a preponderance of the evidence, whether approval of the entrustment agreement is in the best interest of the child. However, if the petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection D1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

The effect of the court's order approving a permanent entrustment agreement is to terminate an entrusting parent's residual parental rights. Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency or (ii) granting custody or guardianship to a person with a legitimate interest. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and

consent thereto. A final order terminating parental rights pursuant to this section renders the approved entrustment agreement irrevocable. Such order may be appealed in accordance with the provisions of § 16.1-296.

D1. Any order transferring custody of the child to a person with a legitimate interest pursuant to subsection D shall be entered only upon a finding, based upon a preponderance of the evidence, that such person is one who (i) after an investigation as directed by the court, is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a person with a legitimate interest should further provide for, as appropriate, any terms and conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

E. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

1999, c. 889; 2000, c. 385; 2006, c. 825; 2009, cc. 98, 260; 2010, c. 331; 2017, c. 200; 2019, c. 434.

§ 16.1-277.02. Petition for relief of care and custody.

A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the local department of social services for investigation and the provision of services, if appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Upon the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § 16.1-266, and shall schedule the matter for a hearing on the petition. Such hearing on the petition may include partial or final disposition of the matter. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The child, if he is 12 years of age or older;

2. The guardian ad litem for the child;

3. The child's parents, custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. The hearing on the petition shall be held pursuant to this section although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263 and 16.1-264; and

4. The local board of social services. Upon receiving notice of the hearing pursuant to this section, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.

B. At the hearing, the local board of social services, the child, the child's parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

C. At the conclusion of the hearing on the petition, the court shall make a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody, unless the petition seeks permanent relief of custody and termination of parental rights. If the petition seeks permanent relief of custody and termination of parental rights, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may enter:

1. A preliminary protective order pursuant to § 16.1-253;

2. An order that requires the local board of social services to provide services to the family as required by law;

3. An order that is consistent with any of the dispositional alternatives pursuant to § 16.1-278.3; or

4. Any combination of these orders.

Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection C1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the

order transfers legal custody of the child to a local board of social services. Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services or to a licensed child-placing agency or granting custody or guardianship to a person with a legitimate interest. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the prospective adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

The court shall schedule a subsequent hearing within 60 days of the hearing held pursuant to this section: (a) to enter a final order of disposition pursuant to § 16.1-278.3 or (b) if the child is placed in foster care, for review of the foster care plan filed pursuant to § 16.1-281. If a party is required to be present at the subsequent hearing, and (1) is present at the hearing on the petition, the party shall be given notice of the date set for the subsequent hearing; (2) if not present, shall be summoned as provided in § 16.1-263.

C1. Any order transferring temporary custody of the child to a person with a legitimate interest pursuant to subsection C shall be entered only upon a finding, based upon a preponderance of the evidence, that such person is one who (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a person with a legitimate interest should further provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § 16.1-253; and, as appropriate, ongoing provision of social services to the child and the child's custodian; and court review of the child's placement with such person with a legitimate interest. Any final order transferring custody of the child to a person with a legitimate interest pursuant to this section shall, in addition, be entered only after an investigation as directed by the court and upon a finding, stated in the court's order, that such person is one who satisfies clauses (i), (ii), and (iii) and is committed to providing a permanent, suitable home for the child.

D. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first

Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

1999, c. 889; 2000, c. 385; 2009, cc. 98, 260; 2010, c. 331; 2013, c. 130; 2019, c. 434.

§ 16.1-277.1. Time limitation.

A. When a child is held continuously in secure detention, he shall be released from confinement if there is no adjudicatory or transfer hearing conducted by the court for the matters upon which he was detained within twenty-one days from the date he was first detained.

B. If a child is not held in secure detention or is released from same after having been confined, an adjudicatory or transfer hearing on the matters charged in the petition or petitions issued against him shall be conducted within 120 days from the date the petition or petitions are filed.

C. When a child is held in secure detention after the completion of his adjudicatory hearing or is detained when the juvenile court has retained jurisdiction as a result of a transfer hearing, he shall be released from such detention if the disposition hearing is not completed within thirty days from the date of the adjudicatory or transfer hearing.

D. The time limitations provided for in this section shall be tolled during any period in which (i) the whereabouts of the child are unknown, (ii) the child has escaped from custody, (iii) the child has failed to appear pursuant to a court order, or (iv) a report is being prepared pursuant to the written request by the attorney for the Commonwealth in accordance with subsection C of § 16.1-269.1. The limitations also may be extended by the court for a reasonable period of time based upon good cause shown, provided that the basis for such extension is recorded in writing and filed among the papers of the proceedings. For the purposes of this section, good cause includes extension of limitations necessary to obtain the presence of a witness to testify regarding the results of scientific analyses or examinations and good cause shown by the director of the court services unit completing a report pursuant to subsection C of § 16.1-269.1 that additional time is needed for the completion of the report.

1985, c. 260; 1988, c. 220; 1999, c. 58; 2009, Sp. Sess. I, cc. 1, 4; 2020, cc. 987, 988.

§ 16.1-277.2. Rejection of plea agreement; recusal.

Upon rejecting a plea agreement in any delinquency matter, a judge shall immediately recuse himself from any further proceedings on the same matter unless the parties agree otherwise.

2014, c. 165.

Article 9 - DISPOSITION

§ 16.1-278. Cooperation of certain agencies, officials, institutions and associations.

A. The judge may order, after notice and opportunity to be heard, any state, county or municipal officer or employee or any governmental agency or other governmental institution to render only such information, assistance, services and cooperation as may be provided for by state or federal law or an ordinance of any city, county or town.

The officer, employee, agency or institution may appeal such order to the circuit court in accordance with § 16.1-296. The circuit court shall advance such appeals on its docket and may stay the order of the juvenile court during the pendency of the appeal. The circuit court may affirm or reverse the order of the juvenile court. Upon reversal, the circuit court may remand the case to the juvenile court for an alternative disposition.

B. The court is authorized to cooperate with and make use of the services of all public or private societies or organizations which seek to protect or aid children or families, in order that the court may be assisted in giving the children and families within its jurisdiction such care, protection and assistance as will best enhance their welfare.

Code 1950, § 16.1-156; 1956, c. 555; 1977, c. 559; 1980, c. 245.

§ 16.1-278.1. Definitions.

As used in this article, unless the context clearly indicates otherwise:

"Parent" includes parent, guardian, legal custodian, or other person standing in loco parentis.

"Public service project" means any governmental or quasi-governmental agency project or any project of a nonprofit corporation or association operated exclusively for charitable or community purposes.

1991, c. 534.

§ 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.

A. Within 60 days of a preliminary removal order hearing held pursuant to § 16.1-252 or a hearing on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be held if the court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian, legal custodian, or other person standing in loco parentis in accordance with § 16.1-263. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian, or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. Notice shall also be provided to the local department of social services, the guardian ad litem and, if appointed, the court-appointed special advocate.

If a child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; or (c) abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any of the following orders of disposition to protect the welfare of the child:

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

2. Permit the child to remain with his parent, subject to such conditions and limitations as the court may order with respect to such child and his parent or other adult occupant of the same dwelling;

3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal development. The prohibition may exclude any such individual from the home under such conditions as the court may prescribe for a period to be determined by the court but in no event for longer than 180 days from the date of such determination. A hearing shall be held within 150 days to determine further disposition of the matter that may include limiting or prohibiting contact for another 180 days;

4. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child. Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, to any of the following:

a. A person with a legitimate interest subject to the provisions of subsection A1;

b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child; however, a court shall not transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed 14 days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this section shall prohibit

the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child. Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of social services as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

6. Transfer legal custody pursuant to subdivision 5 of this section and order the parent to participate in such services and programs or to refrain from such conduct as the court may prescribe; or

7. Terminate the rights of the parent pursuant to § 16.1-283.

A1. Any order transferring custody of the child to a person with a legitimate interest pursuant to subdivision A 5 a shall be entered only upon a finding, based upon a preponderance of the evidence, that such person is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a person with a legitimate interest should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

B. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed in accordance with § 16.1-281 by the local department of social services, a public agency designated by the community policy and management team which places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardians, or child welfare agency.

C. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.

D. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § 16.1-296.

1991, c. 534; 1994, c. 865; 1997, c. 790; 2000, c. 385; 2002, c. 747; 2013, c. 130; 2017, c. 190; 2019, c. 434; 2022, c. 305.

§ 16.1-278.3. Relief of care and custody.

A. Within 60 days of a hearing on a petition for relief of the care and custody of any child pursuant to § 16.1-277.02 at which the court found (i) good cause for the petitioner's desire to be relieved of a child's care and custody or (ii) that permanent relief of custody and termination of residual parental rights is in the best interest of the child, a dispositional hearing shall be held, if a final order disposing of the matter was not entered at the conclusion of the hearing on the petition held pursuant to § 16.1-277.02.

B. Notice of the dispositional hearing shall be provided to the local department of social services, the guardian ad litem for the child, the child if he is at least 12 years of age, and the child's parents, custodian or other person standing in loco parentis. However, if a parent's residual parental rights were terminated at the hearing on the petition held pursuant to § 16.1-277.02, no such notice of the hearing pursuant to this section shall be provided to the parent. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis

fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that the person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263 and 16.1-264.

C. The court may make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection D1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed by the local board of social services or child welfare agency in accordance with § 16.1-281.

D. If the parent or other custodian seeks to be relieved permanently of the care and custody of any child and the court finds by clear and convincing evidence that termination of the parent's parental rights is in the best interest of the child, the court may terminate the parental rights of that parent. If the remaining parent has not petitioned for permanent relief of the care and custody of the child, the remaining parent's parental rights may be terminated in accordance with the provisions of § 16.1-283. Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency or (ii) granting custody or guardianship to a person with a legitimate interest. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. Proceedings under this section shall be advanced on the docket so as to provide for their earliest practicable disposition. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

D1. Any order transferring custody of the child to a person with a legitimate interest pursuant to subsection C or D shall be entered only upon a finding, based upon a preponderance of the evidence,

that such person is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a person with a legitimate interest should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

E. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

F. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § 16.1-296.

1991, c. 534; 1999, c. 889; 2000, c. 385; 2009, cc. 98, 260; 2010, c. 331; 2013, c. 130; 2019, c. 434.

§ 16.1-278.4. Children in need of services.

If a child is found to be in need of services or a status offender, the juvenile court or the circuit court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

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

2. Permit the child to remain with his parent subject to such conditions and limitations as the court may order with respect to such child and his parent.

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

4. Beginning July 1, 1992, in the case of any child fourteen years of age or older, where the court finds that the child is not able to benefit appreciably from further schooling, the court may excuse the child from further compliance with any legal requirement of compulsory school attendance as provided under § 22.1-254 or authorize the child, notwithstanding the provisions of any other law, to be

employed in any occupation which is not legally declared hazardous for children under the age of eighteen.

5. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child caring-institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child. Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

6. Transfer legal custody to any of the following:

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

b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child. The court shall not transfer legal custody of a child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child. Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

7. Require the child to participate in a public service project under such conditions as the court prescribes.

1991, c. 534; 1994, c. 865; 1997, c. 463; 1999, cc. 488, 552; 2002, c. 747; 2017, c. 190; 2022, c. 305.

§ 16.1-278.5. Children in need of supervision.

A. If a child is found to be in need of supervision, the court shall, before final disposition of the case, direct the appropriate public agency to evaluate the child's service needs using an interdisciplinary team approach. The team shall consist of qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. A report of the evaluation shall be filed as provided in § 16.1-274 A. In lieu of directing an evaluation be made, the court may consider the report concerning the child of an interdisciplinary team which met not more than ninety days prior to the court's making a finding that the child is in need of supervision.

B. The court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter any order of disposition authorized by § 16.1-278.4 for a child found to be in need of services;

2. Place the child on probation under such conditions and limitations as the court may prescribe including suspension of the child's driver's license upon terms and conditions which may include the issuance of a restricted license for those purposes set forth in subsection E of § 18.2-271.1;

3. Order the child and/or his parent to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child;

4. Require the child to participate in a public service project under such conditions as the court may prescribe; or

5. a. Beginning July 1, 1992, in the case of any child subject to compulsory school attendance as provided in § 22.1-254, where the court finds that the child's parent is in violation of §§ 22.1-254, 22.1-255, 22.1-265, or § 22.1-267, in addition to any penalties provided in § 22.1-263 or § 22.1-265, the court may order the parent with whom the child is living to participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and/or the parent. Upon the failure of the parent to so participate or cooperate, or to comply with the conditions and limitations that the court orders, the court may impose a fine of not more than $100 for each day in which the person fails to comply with the court order.

b. If the court finds that the parent has willfully disobeyed a lawful process, judgment, decree, or court order requiring such person to comply with the compulsory school attendance law, in addition to any conditions or limitations that the court may order or any penalties provided by §§ 16.1-278.2 through 16.1-278.19, 22.1-263 or § 22.1-265, the court may impose the penalty authorized by § 18.2-371.

C. Any order entered pursuant to this section shall be provided in writing to the child, his parent or legal custodian, and to the child's attorney and shall contain adequate notice of the provisions of § 16.1-292 regarding willful violation of such order.

1991, c. 534; 1992, cc. 837, 880; 1996, c. 45; 1997, c. 210.

§ 16.1-278.6. Status offenders.

If a child is alleged to be a status offender, including but not limited to those cases in which the juvenile is alleged to have committed a curfew violation or a violation of the law regarding tobacco, the juvenile court or the circuit court may enter any order of disposition authorized by § 16.1-278.4.

1991, c. 534; 1997, c. 463.

§ 16.1-278.7. Commitment to Department of Juvenile Justice.

Only a juvenile who is (i) adjudicated delinquent of an act enumerated in subsection B or C of § 16.1-269.1 and is 11 years of age or older or (ii) 14 years of age or older may be committed to the Department of Juvenile Justice. In cases where a waiver of an investigation has been granted pursuant to subdivision A 14 or A 17 of § 16.1-278.8, at the time a court commits a child to the Department of Juvenile Justice the court shall order an investigation pursuant to § 16.1-273 to be completed within 15 days. No juvenile court or circuit court shall order the commitment of any child jointly to the Department of Juvenile Justice and to a local board of social services or transfer the custody of a child jointly to a court service unit of a juvenile court and to a local board of social services. Any person sentenced and committed to an active term of incarceration in the Department of Corrections who is, at the time of such sentencing, in the custody of the Department of Juvenile Justice, upon pronouncement of sentence, shall be immediately transferred to the Department of Corrections.

1991, c. 534; 2000, cc. 954, 981, 988; 2007, c. 510; 2014, cc. 20, 249; 2021, Sp. Sess. I, c. 115.

§ 16.1-278.7:01. Department to give notice of the receipt of certain persons.

A. At the time or receipt of any person, for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the Department shall obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police. A person required to register shall register and submit to be photographed as part of the registration. The Department shall forthwith forward the registration information and photograph to the Department of State Police on the date of the receipt of the person.

B. Whenever a person required to register has failed to comply with the provisions of subsection A, the Department shall promptly investigate or request the State Police promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or petition or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was received. The Department shall notify the State Police forthwith of such actions taken pursuant to this section.

2006, cc. 857, 914.

§ 16.1-278.7:02. Department to give notice of Sex Offender and Crimes Against Minors Registry requirements to certain persons.

A. Prior to the release or discharge of any persons for whom registration with the Sex Offender and Crimes Against Minors Registry is required pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, the

Department shall give notice to the persons of his duty to register with the State Police. A person required to register shall register, submit to be photographed as part of the registration, and provide information regarding place of employment, if available, to the Department. The Department shall also obtain from that person all necessary registration information, including fingerprints and photographs of a type and kind approved by the Department of State Police; inform the person of his duties regarding reregistration and change of address; and inform the person of his duty to register. The Department of Juvenile Justice shall forward the registration information to the Department of State Police on the date of the person's release or discharge.

B. Whenever a person required to register has failed to comply with the provisions of subsection A, the Department shall promptly investigate or request the State Police promptly investigate and, if there is probable cause to believe a violation has occurred, obtain a warrant or assist in obtaining an indictment charging a violation of § 18.2-472.1 in the jurisdiction in which the person was discharged. The Department shall notify the State Police forthwith of such actions taken pursuant to this section.

2006, cc. 857, 914.

§ 16.1-278.8. Delinquent juveniles.

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

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

2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;

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

4. Defer disposition for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, 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;

5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile where the court determines this

participation to be in the best interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;

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

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at 30-day intervals;

8. Impose a fine not to exceed $500 upon such juvenile;

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

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

Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a violation of § 46.2-301.

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

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

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

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

13. Transfer legal custody to any of the following:

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

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

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the juvenile has residence if other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed 14 days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when such local board consents to the commitment. The board to which the juvenile is committed shall have the final authority to determine the appropriate placement for the juvenile. Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282. Any order authorizing removal from the home and transferring legal custody of a juvenile to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so state;

14. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon consideration of the results of an investigation completed pursuant to § 16.1-273, commit the juvenile to the Department of Juvenile Justice, but only if (i) he is 11 years of age or older and has been adjudicated delinquent of an act enumerated in subsection B or C of § 16.1-269.1 or (ii) he is 14 years of age or older and the current offense is (a) an offense that would be a felony if committed by an adult, (b) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense that would be a felony if committed by an adult, or (c) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a part of a common act, transaction or scheme;

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

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

17. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon consideration of the results of an investigation completed pursuant to § 16.1-273, impose the penalty authorized by § 16.1-285.1;

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

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to § 15.2-1812.2.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to § 15.2-1812.2. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

1991, c. 534; 1992, c. 830; 1994, cc. 859, 949; 1996, cc. 755, 914; 1997, c. 318; 1999, cc. 350, 622; 2000, cc. 954, 978, 981, 988, 1020, 1041; 2004, cc. 325, 462; 2005, c. 810; 2009, cc. 813, 840; 2014, cc. 20, 249; 2017, c. 623; 2021, Sp. Sess. I, c. 115; 2022, cc. 305, 414, 415.

§ 16.1-278.8:01. Juveniles found delinquent of first drug offense; screening; assessment; drug tests; costs and fees; education or treatment programs.

Whenever any juvenile who has not previously been found delinquent of any offense under Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 or under any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant or hallucinogenic drugs, or has not previously had a proceeding against him for a violation of such an offense dismissed as provided in § 4.1-1120 or 18.2-251, is found delinquent of any offense concerning the use, in any manner, of drugs, controlled substances, narcotics, marijuana, noxious chemical substances and like substances, the juvenile court or the circuit court shall require such juvenile to undergo a substance abuse screening pursuant to § 16.1-273 and to submit to such periodic substance abuse testing, to include alcohol testing, as may be directed by the court. Such testing shall be conducted by a court services unit of the Department of Juvenile Justice, or by a locally operated court services unit or by personnel of any program or agency approved by the Department. The cost of such testing ordered by the court shall be paid by the Commonwealth from funds appropriated to the Department for this purpose. The court shall also order the juvenile to undergo such treatment or education program for substance abuse, if available, as the court deems appropriate based upon consideration of the substance abuse assessment. The treatment or education shall be provided by a program licensed by the Department of Behavioral Health and Developmental Services or by a similar program available through a facility or program operated by or under contract to the Department of Juvenile Justice or a locally operated court services unit or a program funded through the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.).

2000, cc. 1020, 1041; 2009, cc. 813, 840; 2011, cc. 384, 410; 2014, cc. 674, 719; 2021, Sp. Sess. I, cc. 550, 551.

§ 16.1-278.9. Delinquent children; loss of driving privileges for alcohol, firearm, and drug offenses; truancy.

A. If a court has found facts which would justify a finding that a child at least 13 years of age at the time of the offense is delinquent and such finding involves (i) a violation of § 18.2-266 or of a similar ordinance of any county, city, or town; (ii) a refusal to take a breath test in violation of § 18.2-268.2; (iii) a felony violation of Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248, 18.2-248.1, or 18.2-250; (iv) a misdemeanor violation of Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1 or § 18.2-248, 18.2-248.1, or 18.2-250; (v) the unlawful purchase, possession, or consumption of alcohol in violation of § 4.1-305 or the unlawful drinking or possession of alcoholic beverages in or on public school grounds in violation of § 4.1-309; (vi) public intoxication in violation of § 18.2-388 or a similar ordinance of a county, city, or town; (vii) the unlawful use or possession of a handgun or possession of a "streetsweeper" as defined below; or (viii) a violation of § 18.2-83, the court shall order, in addition to any other penalty that it may impose as provided by law for the offense, that the child be denied a driver's license. In addition to any other penalty authorized by this section, if the offense involves a violation designated under clause (i) and the child was transporting a person 17 years of age or younger, the court shall impose the additional fine and order community service as provided in § 18.2-270. If the offense involves a violation designated under clause (i), (ii), (iii), or (viii), the denial of a driver's license shall

be for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense. If the offense involves a violation designated under clause (iv), (v), or (vi) the denial of driving privileges shall be for a period of six months unless the offense is committed by a child under the age of 16 years and three months, in which case the child's ability to apply for a driver's license shall be delayed for a period of six months following the date he reaches the age of 16 and three months. If the offense involves a first violation designated under clause (v) or (vi), the court shall impose the license sanction and may enter a judgment of guilt or, without entering a judgment of guilt, may defer disposition of the delinquency charge until such time as the court disposes of the case pursuant to subsection F. If the offense involves a violation designated under clause (iii) or (iv), the court shall impose the license sanction and shall dispose of the delinquency charge pursuant to the provisions of this chapter or § 18.2-251. If the offense involves a violation designated under clause (vii), the denial of driving privileges shall be for a period of not less than 30 days, except when the offense involves possession of a concealed handgun or a striker 12, commonly called a "streetsweeper," or any semi-automatic folding stock shotgun of like kind with a spring tension drum magazine capable of holding 12 shotgun shells, in which case the denial of driving privileges shall be for a period of two years unless the offense is committed by a child under the age of 16 years and three months, in which event the child's ability to apply for a driver's license shall be delayed for a period of two years following the date he reaches the age of 16 and three months.

A1. If a court finds that a child at least 13 years of age has failed to comply with school attendance and meeting requirements as provided in § 22.1-258, the court shall order the denial of the child's driving privileges for a period of not less than 30 days. If such failure to comply involves a child under the age of 16 years and three months, the child's ability to apply for a driver's license shall be delayed for a period of not less than 30 days following the date he reaches the age of 16 and three months.

If the court finds a second or subsequent such offense, it may order the denial of a driver's license for a period of one year or until the juvenile reaches the age of 18, whichever is longer, or delay the child's ability to apply for a driver's license for a period of one year following the date he reaches the age of 16 and three months, as may be appropriate.

A2. If a court finds that a child at least 13 years of age has refused to take a blood test in violation of § 18.2-268.2, the court shall order that the child be denied a driver's license for a period of one year or until the juvenile reaches the age of 17, whichever is longer, for a first such offense or for a period of one year or until the juvenile reaches the age of 18, whichever is longer, for a second or subsequent such offense.

B. Any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 or A2 shall be ordered to surrender his driver's license, which shall be held in the physical custody of the court during any period of license denial.

C. The court shall report any order issued under this section to the Department of Motor Vehicles, which shall preserve a record thereof. The report and the record shall include a statement as to whether the child was represented by or waived counsel or whether the order was issued pursuant to subsection A1 or A2. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. No other record of the proceeding shall be forwarded to the Department of Motor Vehicles unless the proceeding results in an adjudication of guilt pursuant to subsection F.

The Department of Motor Vehicles shall refuse to issue a driver's license to any child denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order of denial under subsection E.

D. If the finding as to the child involves a violation designated under clause (i), (ii), (iii) or (vi) of subsection A or a violation designated under subsection A2, the child may be referred to a certified alcohol safety action program in accordance with § 18.2-271.1 upon such terms and conditions as the court may set forth. If the finding as to such child involves a violation designated under clause (iii), (iv), (v), (vii) or (viii) of subsection A, such child may be referred to appropriate rehabilitative or educational services upon such terms and conditions as the court may set forth.

The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any child who has a driver's license at the time of the offense or at the time of the court's finding as provided in subsection A1 or A2 for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school, except that no restricted license shall be issued for travel to and from home and school when school-provided transportation is available and no restricted license shall be issued if the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, or if it involves a second or subsequent violation of any offense designated in subsection A, a second finding by the court of failure to comply with school attendance and meeting requirements as provided in subsection A1, or a second or subsequent finding by the court of a refusal to take a blood test as provided in subsection A2. The issuance of the restricted permit shall be set forth within the court order, a copy of which shall be provided to the child, and shall specifically enumerate the restrictions imposed and contain such information regarding the child as is reasonably necessary to identify him. The child may operate a motor vehicle under the court order in accordance with its terms. Any child who operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a violation of § 46.2-301.

E. Upon petition made at least 90 days after issuance of the order, the court may review and withdraw any order of denial of a driver's license if for a first such offense or finding as provided in subsection A1 or A2. For a second or subsequent such offense or finding, the order may not be reviewed and withdrawn until one year after its issuance.

F. If the finding as to such child involves a first violation designated under clause (vii) of subsection A, upon fulfillment of the terms and conditions prescribed by the court and after the child's driver's license

has been restored, the court shall or, in the event the violation resulted in the injury or death of any person or if the finding involves a violation designated under clause (i), (ii), (v), or (vi) of subsection A, may discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without an adjudication of guilt but a record of the proceeding shall be retained for the purpose of applying this section in subsequent proceedings. Failure of the child to fulfill such terms and conditions shall result in an adjudication of guilt. If the finding as to such child involves a violation designated under clause (iii) or (iv) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of pursuant to the provisions of this chapter or § 18.2-251. If the finding as to such child involves a second violation under clause (v), (vi) or (vii) of subsection A, the charge shall not be dismissed pursuant to this subsection but shall be disposed of under § 16.1-278.8.

1991, cc. 534, 696; 1992, cc. 701, 736, 830; 1993, cc. 482, 866, 972; 1994, c. 338; 2000, c. 835; 2001, cc. 248, 266; 2002, cc. 519, 755; 2003, c. 118; 2005, c. 895; 2007, c. 731; 2010, cc. 522, 569, 570; 2017, c. 623; 2021, Sp. Sess. I, cc. 550, 551.

§ 16.1-278.10. Traffic infractions.

In cases involving a child who is charged with a traffic infraction, the court may impose only those penalties which are authorized to be imposed on adults for such infractions.

1991, c. 534.

§ 16.1-278.11. Mental illness and intellectual disability.

In cases involving a person who is involuntarily admitted because of a mental illness or is judicially certified as eligible for admission to a training center for persons with intellectual disability, disposition shall be in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. A child shall not be committed pursuant to §§ 16.1-278.2 through 16.1-278.8 or the provisions of Title 37.2 to a maximum security unit within any state hospital where adults determined to be criminally insane reside.

1991, c. 534; 2005, c. 716; 2012, cc. 476, 507.

§ 16.1-278.12. When judicial consent in lieu of parental consent authorized.

In cases involving judicial consent to the matters set out in subsections C and D of § 16.1-241, the juvenile court or the circuit court providing consent may also make any appropriate order to protect the health and welfare of the child.

1991, c. 534.

§ 16.1-278.13. Work permits; petitions for treatment, etc.

In cases involving judicial consent to apply for a work permit for a child, the juvenile court shall enter an order either granting, in whole or in part, consent to such application or withholding such consent as is appropriate to protect the health and welfare of the child.

In cases involving petitions filed by or on behalf of a child or such child's parent to obtain treatment, rehabilitation or other services required by law to be provided for such persons, the juvenile court or the circuit court may enter an order in accordance with § 16.1-278.

1991, cc. 511, 534.

§ 16.1-278.14. Criminal jurisdiction; protective orders; family offenses.

In cases involving the violation of any law, regulation or ordinance for the education, protection or care of children or involving offenses committed by one family or household member against another, the juvenile court or the circuit court may impose a penalty prescribed by applicable sections of the Code and may impose conditions and limitations upon the defendant to protect the health or safety of family or household members, including, but not limited to, a protective order as provided in § 16.1-279.1, treatment and counseling for the defendant and payment by the defendant for crisis shelter care for the complaining family or household member.

1991, c. 534; 1992, c. 742; 1996, c. 866.

§ 16.1-278.15. Custody or visitation, child or spousal support generally.

A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family as may be made by the circuit court. The parties to any petition where a child whose custody, visitation, or support is contested shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the Office of the Executive Secretary of the Supreme Court of Virginia. The court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or other program shall be a minimum of four hours in length and shall address the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. Once a party has completed one educational seminar or other like program, the required completion of additional programs shall be at the court's discretion. Parties under this section shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's ability to pay; however, no fee in excess of $50 may be charged. Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program. The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse or neglect, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding. If support is ordered for a child, the order shall also provide that support will continue to be paid for a child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until the child reaches the age of 19 or graduates from high school, whichever occurs first. The court may also order that support

be paid or continue to be paid for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, and such disability existed prior to the child reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and (iii); (b) unable to live independently and support himself; and (c) residing in the home of the parent seeking or receiving child support. Upon request of either party, the court may also order that support payments be made to a special needs trust or an ABLE savings trust account as defined in § 23.1-700.

B. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall be broadly construed to accommodate the best interest of the child. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the custody of the child has previously been awarded to a local board of social services.

C. In any determination of support obligation under this section, the support obligation as it becomes due and unpaid creates a judgment by operation of law. Such judgment becomes a lien against real estate only when docketed in the county or city where such real estate is located. Nothing herein shall be construed to alter or amend the process of attachment of any lien on personal property.

D. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because the petition or motion that resulted in the order was completed, signed and filed by a nonattorney employee of the Department of Social Services.

E. In cases involving charges for desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20.

F. In cases involving a spouse who seeks spousal support after having separated from his spouse, the court may enter any appropriate order to protect the welfare of the spouse seeking support.

G. In any case or proceeding involving the custody or visitation of a child, the court shall consider the best interest of the child, including the considerations for determining custody and visitation set forth in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.

G1. In any case or proceeding involving the custody or visitation of a child, as to a parent, the court may, in its discretion, use the phrase "parenting time" to be synonymous with the term "visitation."

H. In any proceeding before the court for custody or visitation of a child, the court may order a custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco parentis to the child, if the court finds such evaluation would assist it in its determination. The court may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the parties.

I. When deemed appropriate by the court in any custody or visitation matter, the court may order drug testing of any parent, guardian, legal custodian or person standing in loco parentis to the child. The

court may enter such orders as it deems appropriate for the payment of the costs of the testing by the parties.

J. In any custody or visitation case or proceeding wherein an order prohibiting a party from picking the child up from school is entered pursuant to this section, the court shall order a party to such case or proceeding to provide a copy of such custody or visitation order to the school at which the child is enrolled within three business days of such party's receipt of such custody or visitation order.

If a custody determination affects the school enrollment of the child subject to such custody order and prohibits a party from picking the child up from school, the court shall order a party to provide a copy of such custody order to the school at which the child will be enrolled within three business days of such party's receipt of such order. Such order directing a party to provide a copy of such custody or visitation order shall further require such party, upon any subsequent change in the child's school enrollment, to provide a copy of such custody or visitation order to the new school at which the child is subsequently enrolled within three business days of such enrollment.

If the court determines that a party is unable to deliver the custody or visitation order to the school, such party shall provide the court with the name of the principal and address of the school, and the court shall cause the order to be mailed by first class mail to such school principal.

Nothing in this section shall be construed to require any school staff to interpret or enforce the terms of such custody or visitation order.

1991, c. 534; 1992, cc. 585, 716, 742; 1994, c. 769; 1996, cc. 767, 879, 884; 2000, c. 586; 2002, c. 300; 2003, cc. 31, 45; 2004, c. 732; 2008, cc. 136, 845; 2015, cc. 653, 654; 2017, cc. 46, 95, 509; 2023, c. 17.

§ 16.1-278.16. Failure to comply with support obligation; payroll deduction; commitment.

In cases involving (i) the custody, visitation, or support of a child arising under subdivision A 3 of § 16.1-241, (ii) spousal support arising under subsection L of § 16.1-241, (iii) support, maintenance, care, and custody of a child or support and maintenance of a spouse transferred to the juvenile and domestic relations district court pursuant to § 20-79, or (iv) motions to enforce administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, when the court finds that the respondent (a) has failed to perform or comply with a court order concerning the custody and visitation of a child or a court or administrative order concerning the support and maintenance of a child or a court order concerning the support and maintenance of a spouse or (b) under existing circumstances, is under a duty to render support or additional support to a child or pay the support and maintenance of a spouse, the court may order a payroll deduction as provided in § 20-79.1, or the giving of a recognizance as provided in § 20-114. If the court finds that the respondent has failed to perform or comply with such order, and personal or substitute service has been obtained, the court may issue a civil show cause summons or a capias pursuant to this section. The court also may order the commitment of the person as provided in § 20-115 or the court may, in its discretion, impose a sentence of up to 12 months in jail, notwithstanding the provisions of §§ 16.1-69.24 and 18.2-458, relating to punishment

for contempt. If the court finds that an employer, who is under a payroll deduction order pursuant to § 20-79.1, has failed to comply with such order after being given a reasonable opportunity to show cause why he failed to comply with such order, then the court may proceed to impose sanctions on the employer pursuant to subdivision B 9 of § 20-79.3.

1991, c. 534; 2003, cc. 929, 942; 2004, c. 219; 2020, c. 722.

§ 16.1-278.17. Pendente lite support.

In cases involving (i) the custody, visitation or support of a child arising under subdivision A 3 of § 16.1-241, (ii) spousal support arising under subsection L of § 16.1-241, or (iii) support, maintenance, care, and custody of a child or support and maintenance of a spouse transferred to the juvenile and domestic relations district court pursuant to § 20-79, the court may enter support orders in pendente lite proceedings, provided such proceedings are not ex parte.

1991, c. 534.

§ 16.1-278.17:1. Formula for determination of pendente lite spousal support.

A. There shall be a presumption in any judicial proceeding for pendente lite spousal support and maintenance under this title that the amount of the award that would result from the application of the formula set forth in this section is the correct amount of spousal support to be awarded. The court may deviate from the presumptive amount as provided in subsection D.

B. If the court is determining both an award of pendente lite spousal support and maintenance and an award of child support, the court shall first make a determination of the amount of the award of pendente lite spousal support, if any, owed by one party to the other under this section.

C. If the parties have minor children in common, the presumptive amount of an award of pendente lite spousal support and maintenance shall be the difference between 26 percent of the payor spouse's monthly gross income and 58 percent of the payee spouse's monthly gross income. If the parties have no minor children in common, the presumptive amount of the award shall be the difference between 27 percent of the payor spouse's monthly gross income and 50 percent of the payee spouse's monthly gross income. For the purposes of this section, monthly gross income shall have the same meaning as it does in § 20-108.2.

D. The court may deviate from the presumptive amount for good cause shown, including any relevant evidence relating to the parties' current financial circumstances or the impact of any tax exemption and any credits resulting from such exemption that indicates the presumptive amount is inappropriate.

E. The presumptive formula set forth in this section shall only apply to cases where the parties' combined monthly gross income does not exceed $10,000.

2007, c. 909; 2020, c. 651.

§ 16.1-278.18. Money judgments.

A. Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance of any person in cases in which (i) the court has previously

acquired personal jurisdiction over all necessary parties or a proceeding in which such jurisdiction has been obtained has been referred or transferred to the court by a circuit court or another juvenile and domestic relations district court and (ii) payment of such money has been previously ordered by the court, a circuit court, or another juvenile and domestic relations district court. Such judgment shall include reasonable attorneys' fees in cases where the total arrearage for support and maintenance, excluding interest, is equal to or greater than three months of support and maintenance. However, no judgment shall be entered unless the motion of a party, a probation officer, a local director of social services, or the court's own motion is duly served on the person against whom judgment is sought, in accordance with the applicable provisions of law relating to notice when proceedings are reopened. The motion shall contain a caption stating the name of the court, the title of the action, the names of all parties and the address of the party against whom judgment is sought, the amount of arrearage for which judgment is sought, and the date and time when such judgment will be sought. No support order may be retroactively modified. It may, however, be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

B. The judge or clerk of the court shall, upon written request of the obligee under a judgment entered pursuant to this section, certify and deliver an abstract of that judgment to the obligee or Department of Social Services, who may deliver the abstract to the clerk of the circuit court having jurisdiction over appeals from juvenile and domestic relations district court. The clerk shall issue executions of the judgment.

C. If the judgment amount does not exceed the jurisdictional limits of subdivision (1) of § 16.1-77, exclusive of interest and any attorneys' fees, an abstract of any such judgment entered pursuant to this section may be delivered to the clerk of the general district court of the same judicial district. The clerk shall issue executions upon the judgment.

D. Arrearages accumulated prior to July 1, 1976, shall also be subject to the provisions of this section.

1991, c. 534; 2002, c. 747; 2004, c. 204; 2005, c. 880.

§ 16.1-278.19. Attorney fees.

In any matter properly before the court, the court may award attorney fees and costs on behalf of any party as the court deems appropriate based on the relative financial ability of the parties and any other relevant factors to attain equity.

1991, c. 534; 2020, c. 185.

§ 16.1-279. Repealed.

Repealed by Acts 1991, c. 534.

§ 16.1-279.1. Protective order in cases of family abuse.

A. In cases of family abuse, including any case involving an incarcerated or recently incarcerated respondent against whom a preliminary protective order has been issued pursuant to § 16.1-253.1, the court may issue a protective order to protect the health and safety of the petitioner and family or

household members of the petitioner. A protective order issued under this section may include any one or more of the following conditions to be imposed on the respondent:

1. Prohibiting acts of family abuse or criminal offenses that result in injury to person or property;

2. Prohibiting such contacts by the respondent with the petitioner or family or household members of the petitioner as the court deems necessary for the health or safety of such persons;

3. Granting the petitioner possession of the residence occupied by the parties to the exclusion of the respondent; however, no such grant of possession shall affect title to any real or personal property;

4. Enjoining the respondent from terminating any necessary utility service to the residence to which the petitioner was granted possession pursuant to subdivision 3 or, where appropriate, ordering the respondent to restore utility services to that residence;

5. Granting the petitioner and, where appropriate, any other family or household member of the petitioner, exclusive use and possession of a cellular telephone number or electronic device and the password to such device. The court may enjoin the respondent from terminating a cellular telephone number or electronic device before the expiration of the contract term with a third-party provider. The court may enjoin the respondent from using a cellular telephone or other electronic device to locate or surveille the petitioner;

6. Granting the petitioner temporary possession or use of a motor vehicle owned by the petitioner alone or jointly owned by the parties to the exclusion of the respondent and enjoining the respondent from terminating any insurance, registration, or taxes on the motor vehicle and directing the respondent to maintain the insurance, registration, and taxes, as appropriate; however, no such grant of possession or use shall affect title to the vehicle;

7. Requiring that the respondent provide suitable alternative housing for the petitioner and, if appropriate, any other family or household member and where appropriate, requiring the respondent to pay deposits to connect or restore necessary utility services in the alternative housing provided;

8. Ordering the respondent to participate in treatment, counseling or other programs as the court deems appropriate;

9. Granting the petitioner the possession of any companion animal as defined in § 3.2-6500 if such petitioner meets the definition of owner in § 3.2-6500; and

10. Any other relief necessary for the protection of the petitioner and family or household members of the petitioner, including a provision for temporary custody or visitation of a minor child.

A1. If a protective order is issued pursuant to subsection A, the court may also issue a temporary child support order for the support of any children of the petitioner whom the respondent has a legal obligation to support. Such order shall terminate upon the determination of support pursuant to § 20-108.1.

B. 1. The protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day

of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. A written motion requesting a hearing to extend the protective order shall be served as soon as possible on the respondent.

If the petitioner was a family or household member of the respondent at the time the initial protective order was issued, the court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

2. Upon the filing of a written motion requesting a hearing to extend the protective order, the court may issue an ex parte preliminary protective order pursuant to § 16.1-253.1 until the extension hearing. The ex parte preliminary protective order shall specify a date for the extension hearing, which shall be held within 15 days of the issuance of the ex parte preliminary protective order and may be held after the expiration of the protective order. If the respondent fails to appear at the extension hearing because the respondent was not personally served, the court shall schedule a new date for the extension hearing and may extend the ex parte preliminary protective order until such new date. The extended ex parte preliminary protective order shall be served as soon as possible on the respondent. If the respondent was personally served, where the petitioner shows by clear and convincing evidence that a continuance is necessary to meet the ends of justice or the respondent shows good cause, the court may continue the extension hearing and such ex parte preliminary protective order shall remain in effect until the extension hearing.

C. A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court, including a circuit court if the circuit court issued the order, shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. Upon service, the agency making service shall enter the date and time of service and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or

modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

D. Except as otherwise provided in § 16.1-253.2, a violation of a protective order issued under this section shall constitute contempt of court.

E. The court may assess costs and attorney fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

F. Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any juvenile and domestic relations district court by filing with the court an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of the order to the primary law-enforcement agency responsible for service and entry of protective orders which shall, upon receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where practical, the court may transfer information electronically to the Virginia Criminal Information Network.

Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy available of any foreign order filed with that court. A law-enforcement officer may, in the performance of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been provided to him by any source and may also rely upon the statement of any person protected by the order that the order remains in effect.

G. Either party may at any time file a written motion with the court requesting a hearing to dissolve or modify the order. Proceedings to dissolve or modify a protective order shall be given precedence on the docket of the court. Upon petitioner's motion to dissolve the protective order, a dissolution order may be issued ex parte by the court with or without a hearing. If an ex parte hearing is held, it shall be

heard by the court as soon as practicable. If a dissolution order is issued ex parte, the court shall serve a copy of such dissolution order on respondent in conformity with §§ 8.01-286.1 and 8.01-296.

H. As used in this section:

"Copy" includes a facsimile copy.

"Protective order" includes an initial, modified or extended protective order.

I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

J. No fee shall be charged for filing or serving any petition or order pursuant to this section.

K. Upon issuance of a protective order, the clerk of the court shall make available to the petitioner information that is published by the Department of Criminal Justice Services for victims of domestic violence or for petitioners in protective order cases.

L. An appeal of a final protective order issued by a circuit court pursuant to this section shall be given expedited review by the Court of Appeals.

1984, c. 631; 1987, c. 497; 1992, c. 886; 1994, cc. 360, 521, 739, 907; 1996, cc. 866, 900, 945; 1997, c. 603; 1998, c. 684; 2000, cc. 34, 654; 2002, cc. 508, 810, 818; 2004, cc. 972, 980; 2006, c. 308; 2008, cc. 73, 246; 2009, cc. 343, 732; 2010, cc. 425, 468; 2011, cc. 445, 480; 2012, cc. 152, 261; 2014, cc. 318, 346, 613; 2016, c. 102; 2018, cc. 38, 652; 2020, c. 137; 2021, Sp. Sess. I, c. 489; 2023, cc. 370, 620, 621, 742.

§ 16.1-280. Commitment of juveniles with mental illness or intellectual disability.

When any juvenile court has found a juvenile to be in need of services or delinquent pursuant to the provisions of this law and reasonably believes such juvenile has mental illness or intellectual disability, the court may commit him to an appropriate hospital or order mandatory outpatient treatment in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) or admit him to a training center in accordance with the provisions of § 37.2-806 for observation as to his mental condition. No juvenile shall be committed pursuant to this section or Article 16 (§ 16.1-335 et seq.) to a maximum security unit within any state hospital where adults determined to be criminally insane reside. However, the Commissioner of Behavioral Health and Developmental Services may place a juvenile who has been certified to the circuit court for trial as an adult pursuant to § 16.1-269.6 or 16.1-270 or who has been convicted as an adult of a felony in the circuit court in a unit appropriate for the care and treatment of persons under a criminal charge when, in his discretion, such placement is necessary to protect the security or safety of other patients, staff, or the public. The Commissioner shall notify the committing court of any placement in such unit. The committing court shall review the placement at 30-day intervals.

Code 1950, § 16.1-178.2; 1960, c. 103; 1974, cc. 44, 45; 1977, c. 559; 1978, c. 739; 1981, c. 487; 1988, c. 826; 1990, c. 975; 1994, cc. 859, 949; 2009, cc. 813, 840; 2010, cc. 778, 825; 2012, cc. 476, 507.

§ 16.1-281. Foster care plan.

A. In any case in which (i) a local board of social services places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is given to a local board of social services or a child welfare agency, the local department of social services or child welfare agency shall prepare a foster care plan for such child, as described hereinafter. The individual family service plan developed by the family assessment and planning team pursuant to § 2.2-5208 may be accepted by the court as the foster care plan if it meets the requirements of this section.

The representatives of such department or agency shall involve in the development of the plan the child's parent(s), except when parental rights have been terminated or the local department of social services or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, relatives and fictive kin who are interested in the child's welfare, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child. The representatives of such department or agency shall involve a child who is 12 years of age or older in the development of the plan and, at the option of such child, up to two members of the case planning team who are chosen by the child and who are not a foster parent of, or caseworker for, the child. A child under 12 years of age may be involved in the development of the plan if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department or agency shall include in the plan a full description of the reasons therefor.

The department or child welfare agency shall file the plan with the juvenile and domestic relations district court within 45 days following the transfer of custody or the board's placement of the child unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional 60 days. However, a foster care plan shall be filed in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within 45 days following transfer of custody to the board or agency or the board's placement of the child.

B. The foster care plan shall describe in writing (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians, and between the child and his siblings; (iv) the nature of the placement or placements which will be provided for the child, including an assessment of the stability of each placement, the services provided or plans for services to be provided to address placement instability or to prevent disruption of the placement, and a description of other placements that were considered for the child, if any, and

reasons why such other placements were not provided; (v) for school-age children, the school placement of the child; (vi) for children 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing, employment, and money management skills development, along with specific independent living services that will be provided to the child to help him reach these goals; and (vii) for children 14 years and older, an explanation of the child's rights with respect to education, health, visitation, court participation, and the right to stay safe and avoid exploitation. The foster care plan shall include all documentation specified in 42 U.S.C. § 675(5)(I) and § 63.2-905.3. If the child in foster care is placed in a qualified residential treatment program as defined in § 16.1-228, the foster care plan shall also include the report and documentation set forth in subsection A of § 63.2-906.1. If the child in foster care is pregnant or is the parent of a child, the foster care plan shall also include (a) a list of the services and programs to be provided to or on behalf of the child to ensure parental readiness or capability and (b) a description of the foster care prevention strategy for any child born to the child in foster care. In cases in which a foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living, the plan shall also describe the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process. For a child 14 years of age and older, the plan shall include a signed acknowledgment by the child that the child has received a copy of the plan and that the rights contained therein have been explained to the child in an age-appropriate manner.

If the department or child welfare agency concludes that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, the department, child welfare agency or team shall (1) include a full description of the reasons for this conclusion; (2) provide information on the opportunities for placing the child with a relative or in an adoptive home; (3) design the plan to lead to the child's successful placement with a relative or fictive kin for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance program established pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance program established pursuant to § 63.2-1306 or in an adoptive home within the shortest practicable time; and (4) if neither of such placements is feasible, explain why permanent foster care is the plan for the child or independent living is the plan for the child in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living.

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent if the court finds that (A) the residual

parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (B) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (C) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (D) based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the child's health, safety and well-being at risk.

"Independent living" has the meaning set forth in § 63.2-100.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but otherwise meets the definition of "aggravated circumstances."

Within 30 days of making a determination that reasonable efforts to reunite the child with the parents are not required, the court shall hold a permanency planning hearing pursuant to § 16.1-282.1.

C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other person standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child, to the parents or other person standing in loco parentis, and such other persons as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan shall be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and

approving the foster care plan. The hearing shall be held within 60 days of (i) the child's initial foster care placement, if the child was placed through an agreement between the parents or guardians and the local department of social services or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to § 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

C1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of subsection A of § 16.1-282.1; or, in cases in which independent living was identified as the goal for a child in a foster care plan approved prior to July 1, 2011, or in which a child has been admitted to the United States as a refugee or asylee and is over 16 years of age and independent living has been identified as the permanency goal for the child, by directing the board or agency to provide the child with services to achieve independent living status, if the child has attained the age of 16 years, pursuant to clause (v) of subsection A of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.

D. The court in which the foster care plan is filed shall be notified immediately if the child is returned to his parents or other persons standing in loco parentis at the time the board or agency obtained custody or the board placed the child.

E. 1. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, a hearing shall be held within 60 days of such placement. Prior to such hearing, the qualified residential treatment program shall file with the court the assessment report prepared pursuant to clause (viii) of the definition

of qualified residential treatment program set forth in § 16.1-228. The court shall (i) consider the assessment report prepared by a qualified individual pursuant to clause (viii) of the definition of qualified residential treatment program set forth in § 16.1-228 and submitted pursuant to this subsection; (ii) consider the report and documentation required under subsection A of § 63.2-906.1 and filed with the foster care or permanency plan; (iii) determine whether the needs of the child can be met through placement in a foster home or, if not, whether placement in the qualified residential treatment program would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; and (iv) approve or deny the placement of the child in the qualified residential treatment program. The hearing required by this subsection may be held in conjunction with a dispositional hearing held pursuant to subsection C, a foster care review hearing held pursuant to § 16.1-282, a permanency planning hearing held pursuant to § 16.1-282.1, or an annual foster care review hearing held pursuant to § 16.1-282.2, provided that such hearing has already been scheduled by the court and is held within 60 days of the child's placement in the qualified residential treatment program.

2. If the child remains placed in the qualified residential treatment program during any subsequent hearings held pursuant to subsection C or § 16.1-282, 16.1-282.1, or 16.1-282.2, the local board of social services or licensed child-placing agency shall present evidence at such hearing that demonstrates (i) that the ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement in a foster home and that the child's placement in the qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and is consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (ii) the specific treatment or service needs of the child that will be met in the qualified residential treatment program and the length of time the child is expected to need such treatment or services; and (iii) the efforts made by the local board of social services to prepare the child to return home or to be placed with a fit and willing relative, legal guardian, or adoptive parent, or in a foster home. The court shall review such evidence and approve or deny the continued placement of the child in the qualified residential treatment program.

F. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within four months in accordance with § 16.1-282. However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review hearing to be held within 12 months of the entry of such order in accordance with the provisions of § 16.1-282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall be given notice of the date set for the foster care review hearing and parties who are not present shall be summoned as provided in § 16.1-263.

G. Nothing in this section shall limit the authority of the juvenile judge or the staff of the juvenile court, upon order of the judge, to review the status of children in the custody of local boards of social

services or placed by local boards of social services on its own motion. The court shall appoint an attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster care plan filed for the child or to review the child's status in foster care.

1977, c. 559; 1978, cc. 732, 740; 1982, c. 171; 1984, c. 373; 1985, c. 210; 1991, c. 98; 1994, cc. 604, 865; 1997, c. 790; 1998, c. 550; 2000, c. 385; 2002, cc. 397, 512, 664, 729, 747; 2005, c. 653; 2008, cc. 397, 475, 483, 678; 2009, c. 80; 2011, cc. 154, 730; 2013, c. 130; 2015, c. 120; 2016, c. 631; 2019, cc. 282, 688; 2021, Sp. Sess. I, c. 535; 2022, c. 305.

§ 16.1-282. Foster care review.

A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to § 16.1-281, a foster care review hearing shall be held within four months of the dispositional hearing at which the foster care plan pursuant to § 16.1-281 was reviewed if the child (i) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order or (ii) is under the legal custody of a local board of social services or a child welfare agency and has not had a petition to terminate parental rights granted, filed or ordered to be filed on the child's behalf; has not been placed in permanent foster care; or is age 16 or over and the plan for the child is not independent living.

Any interested party, including the parent, guardian or person who stood in loco parentis prior to the board's placement of the child or the board's or child welfare agency's assumption of legal custody, may file with the court the petition for a foster care review hearing hereinafter described at any time after the initial foster care placement of the child. However, the board or child welfare agency shall file the petition within three months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281.

B. The petition shall:

1. Be filed in the court in which the foster care plan for the child was reviewed and approved. Upon the order of such court, however, the petition may be filed in the court of the county or city in which the board or child welfare agency having legal custody or having placed the child has its principal office or where the child resides;

2. State, if such is reasonably obtainable, the current address of the child's parents and, if the child was in the custody of a person or persons standing in loco parentis at the time the board or child welfare agency obtained legal custody or the board placed the child, of such person or persons;

3. Describe the placement or placements provided for the child while in foster care and the services or programs offered to the child and his parents and, if applicable, the persons previously standing in loco parentis;

4. Describe the nature and frequency of the contacts between the child and his parents and, if applicable, the persons previously standing in loco parentis;

5. Set forth in detail the manner in which the foster care plan previously filed with the court was or was not complied with and the extent to which the goals thereof have been met; and

6. Set forth the disposition sought and the grounds therefor; however, in the case of a child who has attained age 16 and for whom the plan is independent living, the foster care plan shall be included and shall address the services needed to assist the child to transition from foster care to independent living.

C. Upon receipt of the petition filed by the board, child welfare agency, or any interested party as provided in subsection B of this section, the court shall schedule a hearing to be held within 30 days if a hearing was not previously scheduled. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The child, if he is 12 years of age or older;

2. The attorney-at-law representing the child as guardian ad litem;

3. The child's parents and, if the child was in the custody of a person standing in loco parentis at the time the department obtained custody, such person or persons. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. If the parent or guardian of the child did not appear at the dispositional hearing and was not noticed to return for the foster care review hearing in accordance with subsection F of § 16.1-281, the parent or guardian shall be summoned to appear at the foster care review hearing in accordance with § 16.1-263. The review hearing shall be held pursuant to this section although a parent or guardian fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent or guardian, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort;

4. The foster parent or foster parents or other care providers of the child;

5. The petitioning board or child welfare agency; and

6. Such other persons as the court, in its discretion, may direct. The local board of social services or other child welfare agency shall identify for the court such other persons as have a legitimate interest in the hearing, including, but not limited to, preadoptive parents for a child in foster care.

D. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, the provisions of sub-section E of § 16.1-281 shall apply to any hearing held pursuant to this section.

E. At the conclusion of the hearing, the court shall, upon the proof adduced in accordance with the best interests of the child and subject to the provisions of subsection F, enter any appropriate order of disposition consistent with the dispositional alternatives available to the court at the time of the

original hearing. The court order shall state whether reasonable efforts, if applicable, have been made to reunite the child with his parents, guardian or other person standing in loco parentis to the child. Any order entered at the conclusion of this hearing that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of subsection A of § 16.1-282.1; or, if the child has attained the age of 16 years and the plan for the child is independent living, directing the board or agency to provide the necessary services to transition from foster care, pursuant to clause (v) of subsection A of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.

F. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms and conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

G. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in a foster care placement or, when a child is returned to his prior family subject to conditions imposed by the court, for so long as such conditions are effective. After the hearing required pursuant to subsection C, the court shall schedule a permanency planning hearing on the case to be held five months thereafter in accordance with § 16.1-282.1 or within 30 days upon the petition of any party entitled to notice in proceedings under this section when the judge determines there is good cause shown for such a hearing. However, in the case of a child who is the subject of an order that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of subsection A of § 16.1-282.1; or by directing the board or agency to provide the child with services to achieve independent living status, if the child has attained the age of 16 years, pursuant to clause (v) of subsection A of § 16.1-282.1, a permanency planning hearing within five months shall not be required and the court shall schedule a foster care review hearing to be held within 12 months of the entry of such order in accordance with the provisions of § 16.1-282.2.

1977, c. 559; 1978, c. 740; 1982, c. 171; 1984, c. 71; 1987, c. 250; 1991, c. 98; 1992, c. 869; 1994, cc. 223, 604, 865; 1997, c. 790; 1998, c. 550; 1999, c. 889; 2000, c. 385; 2002, c. 512; 2008, cc. 475, 483, 678; 2009, c. 80; 2011, c. 730; 2013, c. 130; 2019, cc. 282, 688.

§ 16.1-282.1. Permanency planning hearing for children in foster care.

A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to § 16.1-281, a permanency planning hearing shall be held within 10 months of the dispositional hearing at which the foster care plan pursuant to § 16.1-281 was reviewed if the child (a) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order; or (b) is under the legal custody of a local board of social services or a child welfare agency and has not had a petition to terminate parental rights filed on the child's behalf, has not been placed in permanent foster care, or is age 16 or over and the plan for the child is not independent living. The board or child welfare agency shall file a petition for a permanency planning hearing 30 days prior to the date of the permanency planning hearing scheduled by the court. The purpose of this hearing is to establish a permanent goal for the child and either to achieve the permanent goal or to defer such action through the approval of an interim plan for the child.

To achieve the permanent goal, the petition for a permanency planning hearing shall seek to (i) transfer the custody of the child to his prior family, or dissolve the board's placement agreement and return the child to his prior family; (ii) transfer custody of the child to a relative other than the child's prior family or to fictive kin for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance program pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance program pursuant to § 63.2-1306, subject to the provisions of subsection A1; (iii) terminate residual parental rights pursuant to § 16.1-277.01 or 16.1-283; (iv) place a child who is 16 years of age or older in permanent foster care pursuant to § 63.2-908; (v) if the child has been admitted to the United States as a refugee or asylee and has attained the age of 16 years or older and the plan is independent living, direct the board or agency to provide the child with services to transition from foster care; or (vi) place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with the provisions of subsection A2. If the child has been in the custody of a local board or child welfare agency for 15 of the most recent 22 months and no petition for termination of parental rights has been filed with the court, the local board or child welfare agency shall state in its petition for a permanency planning hearing (a) the reasons, pursuant to subdivision A 1, 2, or 3 of § 63.2-910.2, why a petition for termination of parental rights has not been filed and (b) the reasonable efforts made regarding reunification or transfer of custody to a relative and the timeline of such efforts. In cases in which a foster care plan approved prior to July 1, 2011, includes independent living as the goal for a child who is not admitted to the United States as an asylee or refugee, the petition shall direct the board or agency to provide the child with services to transition from foster care.

For approval of an interim plan, the petition for a permanency planning hearing shall seek to continue custody with the board or agency, or continue placement with the board through a parental agreement; or transfer custody to the board or child welfare agency from the parents or guardian of a child who has been in foster care through an agreement where the parents or guardian retains custody.

Upon receipt of the petition, if a permanency planning hearing has not already been scheduled, the court shall schedule such a hearing to be held within 30 days. The permanency planning hearing

shall be held within 10 months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281. The provisions of subsection B of § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282 and the provisions of subsection G of § 16.1-282 shall apply to the scheduling and notice of proceedings under this section.

A1. The following requirements shall apply to the transfer of custody of the child to a relative other than the child's prior family or to fictive kin for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance program pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance program pursuant to § 63.2-1306 in accordance with the provisions of clause (ii) of subsection A. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide, as appropriate, for any terms or conditions which would promote the child's interest and welfare.

A2. The following requirements shall apply to the selection and approval of placement in another planned permanent living arrangement as the permanent goal for the child in accordance with clause (vi) of subsection A:

1. The board or child welfare agency shall petition for alternative (vi) of subsection A only if the child has a severe and chronic emotional, physical or neurological disabling condition for which the child requires long-term residential treatment; and the board or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and determined that none of those alternatives is in the best interests of the child. In a foster care plan filed with the petition pursuant to this section, the board or agency shall document the following: (i) the investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A and why each of these is not currently in the best interest of the child; (ii) at least one compelling reason why none of the alternatives listed in clauses (i) through (v) is achievable for the child at the time placement in another planned permanent living arrangement is selected as the permanent goal for the child; (iii) the identity of the long-term residential treatment service provider; (iv) the nature of the child's disability; (v) the anticipated length of time required for the child's treatment; and (vi) the status of the child's eligibility for admission and long-term treatment. The court shall ensure that the local department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including through efforts that utilize search technology, including social media, to find the child's biological family members. The court shall ask the child about the child's desired permanency outcome and make a judicial determination, accompanied by an explan-

ation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue to not be in the best interest of the child.

2. Before approving alternative (vi) of subsection A as the plan for the child, the court shall find (i) that the child has a severe and chronic emotional, physical or neurological disabling condition; (ii) that the child requires long-term residential treatment for the disabling condition; and (iii) that none of the alternatives listed in clauses (i) through (v) of subsection A is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child. If the board or agency petitions for alternative (vi), alternative (vi) may be approved by the court for a period of six months at a time.

3. At the conclusion of the permanency planning hearing, if alternative (vi) of subsection A is the permanent plan, the court shall schedule a hearing to be held within six months to review the child's placement in another planned permanent living arrangement in accordance with subdivision A2 4. All parties present at the hearing at which clause (vi) of subsection A is approved as the permanent plan for the child shall be given notice of the date scheduled for the foster care review hearing. Parties not present shall be summoned to appear as provided in § 16.1-263. Otherwise, this subsection A2 shall govern the scheduling and notice for such hearings.

4. The court shall review a foster care plan for any child who is placed in another planned permanent living arrangement every six months from the date of the permanency planning hearing held pursuant to this subsection, so long as the child remains in the legal custody of the board or child welfare agency. The board or child welfare agency shall file such petitions for review pursuant to the provisions of § 16.1-282 and shall, in addition, include in the petition the information required by subdivision A2 1. The petition for foster care review shall be filed no later than 30 days prior to the hearing scheduled in accordance with subdivision A2 3. At the conclusion of the foster care review hearing, if alternative (vi) of subsection A remains the permanent plan, the court shall enter an order that states whether reasonable efforts have been made to place the child in a timely manner in accordance with the permanency plan and to monitor the child's status in another planned permanent living arrangement.

However, if at any time during the six-month approval periods permitted by this subsection, a determination is made by treatment providers that the child's need for long-term residential treatment for the child's disabling condition is eliminated, the board or agency shall immediately begin to plan for post-discharge services and shall, within 30 days of making such a determination, file a petition for a permanency planning hearing pursuant to subsection A. Upon receipt of the petition, the court shall schedule a permanency planning hearing to be held within 30 days. The provisions of subsection B of § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282 and the provisions of subsection G of § 16.1-282 shall apply to proceedings under this section.

A3. The following requirements shall apply to the selection and approval of permanent foster care pursuant to clause (iv) of subsection A:

1. The court shall ensure that the local department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including through efforts that utilize search technology, including social media, to find the child's biological family members.

2. The court shall ask the child about the child's desired permanency outcome and make a judicial determination, accompanied by an explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue to not be in the best interest of the child.

B. The following requirements shall apply to the selection and approval of an interim plan for the child in accordance with subsection A:

1. The board or child welfare agency shall petition for approval of an interim plan only if the board or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and determined that none of those alternatives is in the best interest of the child. If the board or agency petitions for approval of an interim plan, such plan may be approved by the court for a maximum period of six months. The board or agency shall also file a foster care plan that (i) identifies a permanent goal for the child that corresponds with one of the alternatives specified in clauses (i) through (v) of subsection A; (ii) includes provisions for accomplishing the permanent goal within six months; and (iii) summarizes the investigation conducted of the alternatives listed in clauses (i) through (v) of subsection A and why achieving each of these is not in the best interest of the child at this time. The foster care plan shall describe the child's placement, including the in-state and out-of-state placement options and whether the child's placement is in state or out of state. If the child's placement is out of state, the foster care plan shall provide the reason why the out-of-state placement is appropriate and in the best interests of the child.

2. Before approving an interim plan for the child, the court shall find:

a. When returning home remains the plan for the child, that the parent has made marked progress toward reunification with the child, the parent has maintained a close and positive relationship with the child, and the child is likely to return home within the near future, although it is premature to set an exact date for return at the time of this hearing; or

b. When returning home is not the plan for the child, that marked progress is being made to achieve the permanent goal identified by the board or child welfare agency and that it is premature to set an exact date for accomplishing the goal at the time of this hearing. The court shall consider the in-state and out-of-state placement options, and if the child has been placed out of state, determine whether the out-of-state placement is appropriate and in the best interests of the child.

3. Upon approval of an interim plan, the court shall schedule a hearing to be held within six months to determine that the permanent goal is accomplished and to enter an order consistent with alternative (i), (ii), (iii), (iv), or (v) of subsection A. All parties present at the initial permanency planning hearing shall be given notice of the date scheduled for the second permanency planning hearing. Parties not

present shall be summoned to appear as provided in § 16.1-263. Otherwise, subsection A shall govern the scheduling and notice for such hearings.

C. In each permanency planning hearing and in any hearing regarding the transition of the child from foster care to independent living, the court shall consult with the child in an age-appropriate manner regarding the proposed permanency plan or transition plan for the child, unless the court finds that such consultation is not in the best interests of the child.

D. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, the provisions of subsection E of § 16.1-281 shall apply to any hearing held pursuant to this section.

E. At the conclusion of the permanency planning hearing held pursuant to this section, whether action is taken or deferred to achieve the permanent goal for the child, the court shall enter an order that states whether reasonable efforts have been made to reunite the child with the child's prior family, if returning home is the permanent goal for the child; or whether reasonable efforts have been made to achieve the permanent goal identified by the board or agency, if the goal is other than returning the child home.

In making this determination, the court shall give consideration to whether the board or agency has placed the child in a timely manner in accordance with the foster care plan and completed the steps necessary to finalize the permanent placement of the child.

1997, c. 790; 1998, c. 550; 1999, c. 889; 2000, c. 385; 2002, c. 512; 2008, cc. 475, 483, 678; 2011, c. 730; 2013, c. 130; 2016, c. 631; 2017, c. 190; 2019, cc. 282, 688; 2020, cc. 224, 366, 934; 2021, Sp. Sess. I, c. 254.

§ 16.1-282.2. Annual foster care review.

A. The court shall review a foster care plan annually for any child who remains in the legal custody of a local board of social services or a child welfare agency and (i) on whose behalf a petition to terminate parental rights has been granted, filed or ordered to be filed, (ii) who is placed in permanent foster care, or (iii) who is age 16 or over and for whom the plan is independent living. The foster care review hearing shall be scheduled at the conclusion of a hearing held pursuant to § 16.1-281, 16.1-282, or 16.1-282.1 at which the order is entered: terminating parental rights, directing the filing of a petition for termination of parental rights by the board or agency, placing the child in permanent foster care, or directing the board or agency to provide the child who is age 16 or over and for whom the plan is independent living with services to transition from foster care. The foster care review hearing shall be held within 12 months of the date of such order, so long as the child remains in the custody of the board or agency.

The board or agency shall file the petition for a foster care review hearing, and the court shall provide notice of the foster care review hearing in accordance with the provisions of § 16.1-282. The board or agency shall file a written Adoption Progress Report with the juvenile court pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283, if applicable, with the petition required by this section. The court

order entered at the conclusion of the hearing held on the petition shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the approved foster care plan that established a permanent goal for the child and to complete the steps necessary to finalize the permanent placement of the child.

B. At the foster care review hearing in the case of a child who is placed in permanent foster care, the court shall give consideration to the appropriateness of the services being provided to the child and permanent foster parents, to any change in circumstances since the entry of the order placing the child in permanent foster care, and to such other factors as the court deems proper.

C. At the foster care review hearing in the case of a child who meets the criteria of subdivisions A 1 through 4 of § 16.1-283.2, the court shall inquire of the guardian ad litem and the local board of social services whether the child has expressed a preference that the possibility of restoring the parental rights of his parent or parents be investigated. If the child expresses or has expressed such a preference, the court shall direct the local board of social services or the child's guardian ad litem to conduct an investigation of the parent or parents. If, following such investigation, the local board of social services or the child's guardian ad litem deems it appropriate to do so, either may file a petition for the restoration of parental rights. A hearing on such petition shall be held as provided by § 16.1-283.2.

D. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, the provisions of subsection E of § 16.1-281 shall apply to any hearing held pursuant to this section.

2002, c. 512; 2008, cc. 475, 483; 2018, c. 104; 2019, cc. 282, 688.

§ 16.1-283. Termination of residual parental rights.

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights.

Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services or to a licensed child-placing agency or transferring custody to a person with a legitimate interest. However, in such cases the court shall give a consideration to granting custody to a person with a legitimate interest, and if custody is not granted to a person with a legitimate interest, the judge shall communicate to the parties the basis for such decision either

orally or in writing. An order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto.

The summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any preadoptive parents for the child informing them that they may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding. The persons entitled to notice and an opportunity to be heard need not be made parties to the proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264.

A1. Any order transferring custody of the child to a person with a legitimate interest pursuant to subsection A shall be entered only upon a finding, based upon a preponderance of the evidence, that such person is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a person with a legitimate interest should further provide, as appropriate, for any terms and conditions that would promote the child's interest and welfare.

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life, health or development; and

2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time. In making this determination, the court shall take into consideration the efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.

Proof of any of the following shall constitute prima facie evidence of the conditions set forth in subdivision B 2:

a. The parent or parents have a mental or emotional illness or intellectual disability of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development;

b. The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parental ability has been seriously impaired and the parent, without good cause, has not responded to or followed through with recommended and available treatment which could have improved the capacity for adequate parental functioning; or

c. The parent or parents, without good cause, have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

C. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the parent-child relationship. Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition; or

2. The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed 12 months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or been unable to make substantial progress towards elimination of the conditions which led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

D. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and

2. The child's parent or parents, guardian, or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and

3. Diligent efforts have been made to locate the child's parent or parents, guardian, or relatives without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) the parent has subjected any child to aggravated circumstances.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or a child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse which place the child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but otherwise meets the definition of "aggravated circumstances."

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection or who has been found by the court to have subjected any child to aggravated circumstances.

F. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first written Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

G. Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he is 14 years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. However, residual parental rights of a child 14 years of age or older may be terminated over the objection of the child, if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion.

1977, c. 559; 1978, c. 340; 1979, c. 281; 1980, c. 295; 1985, c. 584; 1987, c. 6; 1988, c. 791; 1998, c. 550; 1999, c. 889; 2000, c. 385; 2002, cc. 664, 729; 2012, cc. 476, 507; 2019, c. 434; 2021, Sp. Sess. I, c. 535.

§ 16.1-283.1. Authority to enter into voluntary post-adoption contact and communication agreement.

A. In any case in which (i) a child has been placed in foster care as a result of (a) court commitment, (b) an entrustment agreement entered into by the parent or parents, or (c) other voluntary relinquishment by the parent or parents; (ii) the parent or parents have voluntarily consented to the adoption of the child; or (iii) the parental rights of the parent or parents have been involuntarily terminated, the child's birth parent or parents may enter into a written post-adoption contact and communication agreement with the pre-adoptive parent or parents as provided in Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. Unless the parental rights of the birth parent or parents have been terminated pursuant to subsection E of § 16.1-283, a local board of social services or child welfare agency required to file a petition for a permanency planning hearing pursuant to § 16.1-282.1 may inform the birth parent or parents and shall inform the adoptive parent or parents that they may enter into such an agreement and shall inform the child if he is 14 years of age or older that he may consent to such an agreement.

B. The court may consider the appropriateness of a written post-adoption contact and communication agreement entered into pursuant to subsection A and in accordance with Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2 at the permanency planning hearing pursuant to § 16.1-282.1 and, if the court finds that all of the requirements of subsection A and Article 1.1 (§ 63.2-1220.2 et seq.) of

Chapter 12 of Title 63.2 have been met, shall incorporate the written post-adoption contact and communication agreement into an order entered at the conclusion of such hearing.

2009, cc. 98, 260; 2010, c. 331; 2019, cc. 65, 84; 2020, c. 98.

§ 16.1-283.2. Restoration of parental rights.

A. If a child is in the custody of the local department of social services and a pre-adoptive parent or parents have not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent under the following circumstances:

1. The child is at least 14 years of age;

2. The child was previously adjudicated to be an abused or neglected child, child in need of services, child in need of supervision, or delinquent child;

3. The parent's rights were terminated under a final order pursuant to subsection B, C, or D of § 16.1-283 at least two years prior to the filing of the petition to restore parental rights;

4. The child has not achieved his permanency goal or the permanency goal was achieved but not sustained; and

5. The child, if he is 14 years of age or older, and the parent whose rights are to be reinstated consent to the restoration of the parental rights.

B. Notwithstanding the provisions of subsection A, the court may accept (i) a petition involving a child younger than 14 years of age if (a) the child is the sibling of a child for whom a petition for restoration of parental rights has been filed and the child who is younger than 14 years of age meets all other criteria for restoration of parental rights set forth in subsection A, or (b) the child's guardian ad litem and the local department of social services jointly file the petition for restoration; or (ii) a petition filed before the expiration of the two-year period following termination of parental rights if the child will turn 18 before the expiration of the two-year period, and the court finds that accepting such a petition is in the best interest of the child.

C. The court shall set a hearing on the petition and serve notice of the hearing along with a copy of the petition on the former parent of the child whose rights are the subject of the petition, any other parent who retains legal rights to the child, the child's court-appointed special advocate, if one has been appointed, and either the child's guardian ad litem or the local board of social services, whichever is not the petitioner.

D. If the court finds, based upon clear and convincing evidence, that the parent is willing and able to (i) receive and care for the child; (ii) have a positive, continuous relationship with the child; (iii) provide a permanent, suitable home for the child; and (iv) protect the child from abuse and neglect, the court may enter an order permitting the local board of social services to place the child with the former parent whose rights are the subject of the petition, subject to the requirements of the placement plan developed pursuant to subsection E and for visitation required pursuant to subsection F.

E. Within 60 days of the filing of the petition for restoration of parental rights and prior to the entry of an order pursuant to subsection D, the local board of social services shall develop a written placement plan for the child, which shall (i) describe the programs, services, and other supports that shall be offered to the child and the former parent with whom the child has been placed and (ii) set forth requirements for the participation of the former parent with whom the child has been placed in programs and services described in the placement plan and the conduct of the child's former parent with whom the child has been placed. Such plan shall be incorporated into the order entered pursuant to subsection D.

F. Following the placement of a child with his former parent following entry of an order pursuant to subsection D, the director of the local department of social services shall cause the child to be visited by an agent of such local board or local department at least three times within the six-month period immediately following placement of the child in order to evaluate the suitability of the placement and the progress of the former parent toward remedying the factors and conditions that led to or required continuation of the child's foster care placement; however, no less than 90 days shall elapse between the first visit and the last visit. At least one of the visits shall be conducted in the home of the former parent whose rights are the subject of the petition in the presence of the former parent.

G. Upon completion of the visitation required pursuant to subsection F, the director of the local department of social services shall make a written report to the court, in such form as the Commissioner of Social Services may prescribe, describing (i) findings made as a result of the visits required pursuant to subsection F and (ii) findings and information related to the former parent's compliance with requirements of the placement plan developed pursuant to subsection E.

H. Upon receipt of the report required pursuant to subsection G, the court shall set a hearing on the petition for restoration of parental rights and serve notice of the hearing, along with a copy of the report required pursuant to subsection G, on the former parent of the child whose rights are the subject of the petition, any other parent who retains legal rights to the child, the child's court-appointed special advocate, if one has been appointed, and the child's guardian ad litem.

I. If, upon consideration of the report required pursuant to subsection G, the court finds by clear and convincing evidence that the restoration of parental rights is in the child's best interest, the court shall enter an order restoring the parental rights of the child's parent. In determining whether restoration is in the best interest of the child, the court shall consider the following:

1. Whether the parent whose rights are to be reinstated agrees to the reinstatement and has substantially remedied the conditions that led to or required continuation of the child's foster care placement;

2. The age and maturity of the child and whether the child consents to the reinstatement of the former parent's rights, if the child is 14 years of age or older, or the child's preference with regard to the reinstatement of the former parent's rights, if the child is younger than 14 years of age;

3. Whether the restoration of parental rights will present a risk to the child's life, health, or development;

4. Whether the restoration of parental rights will affect benefits available to the child; and

5. Other material changes in circumstances, if any, that warrant the granting of the petition.

J. The court may revoke its order permitting the placement of a child with his former parent pursuant to subsection D at any time prior to entry of an order restoring parental rights to the former parent of the child, for good cause shown, on its own motion or on the motion of the child's guardian ad litem or the local department.

K. A petition for restoration of parental rights filed while the child is younger than 18 years of age shall not become invalid because the child reaches 18 years of age prior to the entry of an order of restoration of parental rights. Any order restoring parental rights to a parent of a child pursuant to this section entered after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the court.

L. The granting of a petition under this section does not vacate the findings of fact or conclusions of law contained in the original order that terminated the parental rights of the child's parent.

2013, cc. 338, 685.

§ 16.1-283.3. Review of voluntary continuing services and support agreements for former foster youth.

A. Whenever a program participant, as defined in § 63.2-918, enters into a voluntary continuing services and support agreement with a local department of social services pursuant to § 63.2-921, a hearing shall be held to review the agreement and the program participant's case plan. In determining whether to approve the case plan, the court shall determine whether remaining in the care and placement responsibility of the local department of social services is in the program participant's best interests and whether the program participant's case plan is sufficient to achieve the goal of independence. Such hearing shall be held by the juvenile and domestic relations district court that last had jurisdiction over the program participant's foster care proceedings when the program participant was a minor. The petition for review of the voluntary continuing services and support agreement and the program participant's case plan shall be filed by the local department of social services no later than 30 days after execution of the voluntary continuing services and support agreement. The petition shall include documentation of the program participant's last foster care placement as a minor and the responsible local department of social services, a copy of the signed voluntary continuing services and support agreement, a copy of the program participant's case plan, and any other information the local department of social services or the program participant wishes the court to consider.

B. Upon receiving a petition for review of the voluntary continuing services and support agreement and the program participant's case plan, the court shall schedule a hearing to be held within 45 days

after receipt of the petition. The court may appoint counsel or a guardian ad litem for the program participant pursuant to § 16.1-266. The court may reappoint or continue the appointment of the court-appointed special advocate volunteer who served the program participant as a minor or, if the previous volunteer is unavailable, appoint another special advocate volunteer. The court shall provide notice of the hearing and copies of the petition to the program participant, the program participant's legal counsel, the local department of social services, and any other persons who, in the court's discretion, have a legitimate interest in the hearing. The local department of social services shall identify for the court all persons who may have a legitimate interest in the hearing.

C. At the conclusion of the hearing, the court shall enter an order that:

1. Determines whether remaining under the care and placement responsibility of the local department of social services is in the best interests of the program participant; and

2. Approves or denies the program participant's case plan.

In determining whether to approve or deny the program participant's case plan, the court shall consider whether the services and support provided under the case plan are sufficient to support the program participant's goal of achieving independence. If the court makes any revision to the case plan, a copy of such revisions shall be sent by the court to all persons who received a copy of the original case plan.

D. After the initial hearing, the court may close the case or schedule a subsequent hearing to be held within six months to review the program participant's case plan. Subsequent review hearings may be held at six-month or shorter intervals in the discretion of the court. The local department of social services shall file a petition for review of the program participant's case plan within 30 days prior to any such scheduled hearing. If a hearing was not previously scheduled, the court shall schedule a hearing to be held within 30 days of receipt of the petition. The court shall provide notice of the hearing and a copy of the petition in accordance with subsection B. If subsequent review hearings are not held by the court, the local department of social services shall conduct administrative reviews pursuant to § 63.2-923.

E. In all hearings held pursuant to this section, the court shall consult with the program participant in an age-appropriate manner regarding his case plan.

2020, cc. 95, 732.

§ 16.1-284. When adult sentenced for juvenile offense.

A. When the juvenile court sentences an adult who has committed, before attaining the age of 18, an offense that would be a crime if committed by an adult, the court may impose, for each offense, the penalties that are authorized to be imposed on adults for such violations, not to exceed the punishment for a Class 1 misdemeanor, provided that the total jail sentence imposed shall not exceed 36 continuous months and the total fine shall not exceed $2,500 or the court may order a disposition as provided in subdivision A 4, 5, 7, 11, 12, 14, or 17 and subsection B of § 16.1-278.8.

B. A person sentenced pursuant to this section shall earn good time credit at the rate of one day for each one day served, including all days served while confined in jail or secured detention prior to conviction and sentencing, in which the person has not violated the written rules and regulations of the jail.

Code 1950, § 16.1-177.1; 1956, c. 555; 1973, c. 440; 1977, c. 559; 1978, c. 142; 1980, c. 235; 1983, c. 336; 1985, c. 260; 1996, cc. 755, 914; 2016, c. 626; 2020, cc. 18, 532.

§ 16.1-284.1. Placement in secure local facility.

A. If a juvenile 14 years of age or older is found to have committed an offense which if committed by an adult would be punishable by confinement in a state or local correctional facility as defined in § 53.1-1, and the court determines (i) that the juvenile has not previously been and is not currently adjudicated delinquent of a violent juvenile felony or found guilty of a violent juvenile felony, (ii) that the juvenile has not been released from the custody of the Department within the previous 18 months, (iii) that the interests of the juvenile and the community require that the juvenile be placed under legal restraint or discipline, and (iv) that other placements authorized by this title will not serve the best interests of the juvenile, then the court may order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed six months from the date the order is entered, for a single offense or multiple offenses. However, if the single offense or multiple offenses, which if committed by an adult would be punishable as a felony or a Class 1 misdemeanor, caused the death of any person, then the court may order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed 12 months from the date the order is entered.

The period of confinement ordered may exceed 30 calendar days if the juvenile has had an assessment completed by the secure facility to which he is ordered concerning the appropriateness of the placement.

B. If the period of confinement in a detention home or other secure facility for juveniles is to exceed 30 calendar days, and the juvenile is eligible for commitment pursuant to subdivision A 14 of § 16.1-278.8, then the court shall order the juvenile committed to the Department, but suspend such commitment. In suspending the commitment to the Department as provided for in this subsection, the court shall specify conditions for the juvenile's satisfactory completion of one or more community or facility based treatment programs as may be appropriate for the juvenile's rehabilitation.

C. During any period of confinement which exceeds 30 calendar days ordered pursuant to this section, the court shall conduct a mandatory review hearing at least once during each 30 days and at such other times upon the request of the juvenile's probation officer, for good cause shown. If it appears at such hearing that the purpose of the order of confinement has been achieved, the juvenile shall be released on probation for such period and under such conditions as the court may specify and remain subject to the order suspending commitment to the State Department of Juvenile Justice. If the juvenile's commitment to the Department has been suspended as provided in subsection B of this section, and if the court determines at the first or any subsequent review hearing that the juvenile is

consistently failing to comply with the conditions specified by the court or the policies and program requirements of the facility, then the court shall order that the juvenile be committed to the State Department of Juvenile Justice. If the court determines at the first or any subsequent review hearing that the juvenile is not actively involved in any community facility based treatment program through no fault of his own, then the court shall order that the juvenile be released under such conditions as the court may specify subject to the suspended commitment.

C1. The appearance of the juvenile before the court for a hearing pursuant to subsection C may be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. A facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

D. A juvenile may only be ordered confined pursuant to this section to a facility in compliance with standards established by the State Board for such placements. Standards for these facilities shall require juveniles placed pursuant to this section for a period which exceeds 30 calendar days be provided separate services for their rehabilitation, consistent with the intent of this section.

E. The Department of Juvenile Justice shall assist the localities or combinations thereof in implementing this section consistent with the statewide plan required by § 16.1-309.4 and pursuant to standards promulgated by the State Board, in order to ensure the availability and reasonable access of each court to the facilities the use of which is authorized by this section.

1985, c. 260; 1989, c. 733; 1995, cc. 696, 699; 1996, cc. 755, 914; 2000, c. 978; 2001, c. 140; 2012, c. 94; 2013, c. 651; 2015, c. 391.

§ 16.1-285. Duration of commitments.

Except as provided in § 16.1-285.1, all commitments under this chapter shall be for an indeterminate period having regard to the welfare of the juvenile and interests of the public, but no juvenile committed hereunder shall be held or detained longer than thirty-six continuous months or after such juvenile has attained the age of twenty-one years. However, the thirty-six month limitation shall not apply in cases of commitment for an act of murder or manslaughter. The Department shall have the authority to discharge any juvenile or person from its custody, including releasing a juvenile or person to parole supervision, in accordance with policies and procedures established by the State Board and with other provisions of law. Parole supervision programs shall be operated through the court services units established pursuant to § 16.1-233. A juvenile or person who violates the conditions of his

parole granted pursuant to this section may be proceeded against for a revocation or modification of parole status pursuant to § 16.1-291.

Code 1950, § 16.1-180; 1956, c. 555; 1977, c. 559; 1985, cc. 260, 388; 1996, cc. 755, 914; 2000, cc. 954, 981, 988; 2001, c. 853.

§ 16.1-285.1. Commitment of serious offenders.

A. In the case of a juvenile fourteen years of age or older who has been found guilty of an offense which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months, (iii) the felony offense is punishable by a term of confinement of greater than twenty years if the felony was committed by an adult, or (iv) the juvenile has been previously adjudicated delinquent for an offense which if committed by an adult would be a felony punishable by a term of confinement of twenty years or more, and the circuit court, or the juvenile or family court, as the case may be, finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, then the court may order the juvenile committed to the Department of Juvenile Justice for placement in a juvenile correctional center for the period of time prescribed pursuant to this section.

Alternatively, in order to determine if a juvenile, transferred from a juvenile and domestic relations district court to a circuit court pursuant to § 16.1-269.1, appropriately qualifies for commitment pursuant to this section, notwithstanding the inapplicability of the qualification criteria set forth in clauses (i) through (iv), the circuit court may consider the commitment criteria set forth in subdivisions 1, 2, and 3 of subsection B as well as other components of the juvenile's life history and, if upon such consideration in the opinion of the court the needs of the juvenile and the interests of the community would clearly best be served by commitment hereunder, may so commit the juvenile.

B. Prior to committing any juvenile pursuant to this section, the court shall consider:

1. The juvenile's age;

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

3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the number and nature of previous contacts with courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous

adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated offenses; and

4. The Department's estimated length of stay.

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

C. In ordering commitment pursuant to this section, the court shall specify a period of commitment not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first. The court may also order a period of determinate or indeterminate parole supervision to follow the commitment but the total period of commitment and parole supervision shall not exceed seven years or the juvenile's twenty-first birthday, whichever occurs first.

D. Upon receipt of a juvenile committed under the provisions of this section, the Department shall evaluate the juvenile for the purpose of considering placement of the juvenile in an appropriate juvenile correctional center for the time prescribed by the committing court. Such a placement decision shall be made based on the availability of treatment programs at the facility; the level of security at the facility; the offense for which the juvenile has been committed; and the welfare, age and gender of the juvenile.

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

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

1985, c. 260; 1989, c. 717; 1992, c. 484; 1994, cc. 859, 949; 1996, cc. 755, 914; 2001, c. 563; 2021, Sp. Sess. I, c. 284.

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

A. Upon receipt of a petition of the Department of Juvenile Justice for a hearing concerning a juvenile committed under § 16.1-285.1, the court shall schedule a hearing within thirty days and shall appoint

counsel for the juvenile pursuant to § 16.1-266. The court shall provide a copy of the petition, the progress report required by this section, and notice of the time and place of the hearing to (i) the juvenile, (ii) the juvenile's parent, legal guardian, or person standing in loco parentis, (iii) the juvenile's guardian ad litem, if any, (iv) the juvenile's legal counsel, and (v) the attorney for the Commonwealth who prosecuted the juvenile during the delinquency proceeding. The attorney for the Commonwealth shall provide notice of the time and place of the hearing by first-class mail to the last known address of any victim of the offense for which the juvenile was committed if such victim has submitted a written request for notification to the attorney for the Commonwealth.

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

B1. The appearance of the juvenile before the court may be by (i) personal appearance before the judge, or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. A facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

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

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

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

1994, cc. 859, 949; 1995, c. 536; 1996, cc. 755, 914; 2002, c. 511; 2021, Sp. Sess. I, c. 284.

§ 16.1-286. Cost of maintenance; approval of placement; semiannual review.

A. When the court determines that the behavior of a child within its jurisdiction is such that it cannot be dealt with in the child's own locality or with the resources of his locality, the judge shall refer the child to the locality's family assessment and planning team for assessment and a recommendation for services. Based on this recommendation, the court may take custody and place the child, pursuant to the provisions of subdivision 5 of § 16.1-278.4 or subdivision A 13 b of § 16.1-278.8, in a private or locally operated public facility, or nonresidential program with funding in accordance with the Children's Services Act (§ 2.2-5200 et seq.). No child shall be placed outside the Commonwealth by a court without first complying with the appropriate provisions of Chapter 11 (§ 63.2-1100 et seq.) of Title 63.2 or with regulations of the State Board of Social Services relating to resident children placed out of the Commonwealth.

The Board shall establish a per diem allowance to cover the cost of such placements. This allowance may be drawn from funds allocated through the state pool of funds to the community policy and management team of the locality where the child resides as such residence is determined by the court.

B. The court service unit of the locality which made the placement shall be responsible for monitoring and supervising all children placed pursuant to this section. The court shall receive and review, at least semiannually, recommendations concerning the continued care of each child in such placements.

Code 1950, § 16.1-181.1; 1976, c. 464; 1977, c. 559; 1978, c. 310; 1982, c. 166; 1987, c. 667; 1989, c. 733; 1991, c. 534; 1992, cc. 732, 837, 880; 1995, cc. 696, 699; 1997, c. 347; 1999, c. 669; 2003, c. 579; 2015, c. 366; 2021, Sp. Sess. I, c. 283.

§ 16.1-287. Transfer of information upon commitment; information to be furnished by and to local school boards.

Whenever the court commits a child to the Department of Juvenile Justice, or to any other institution or agency, it shall transmit with the order of commitment copies of the clinical reports, predisposition study and other information it has pertinent to the care and treatment of the child. The Department shall not be responsible for any such committed child until it has received the court order and the

information concerning the child. All local school boards shall be required to furnish the Department promptly with any information from their files that the Department deems to be necessary in the classification, evaluation, placement or treatment of any child committed to the Department. The Department of Juvenile Justice's Education Division, pursuant to § 22.1-289, shall likewise be required to furnish local school boards academic, and career and technical education and related achievement information promptly from its files that the local school board may deem necessary when children are returned to the community from the Department's care. The Department and other institutions or agencies shall give to the court such information concerning the child as the court at any time requires. All such information shall be treated as confidential.

Code 1950, § 16.1-181; 1956, c. 555; 1974, cc. 44, 45, 266; 1977, c. 559; 1981, c. 487; 1989, c. 733; 2001, c. 483; 2005, c. 154; 2012, cc. 803, 835.

§ 16.1-288. Protection of religious affiliations.

In placing a child under the guardianship or custody of an individual or of a private agency or institution, the court shall whenever practicable select a person, or an agency or institution governed by persons, of the same religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents and religious faith of the child, or, if the religious faith of the child is not ascertainable, then of the faith of either of the parents or of the child, unless the parent or parents of the child waive such selection.

Code 1950, § 16.1-182; 1956, c. 555; 1977, c. 559.

§ 16.1-289. Review of order of commitment.

The juvenile court or the circuit court, as the case may be, of its own motion may reopen any case and may modify or revoke its order. The juvenile court or the circuit court shall before modifying or revoking such order grant a hearing after notice in writing to the complainant, if any, and to the person or agency having custody of the child; provided, however, that this section shall not apply in the case of a child committed to the Department after sixty days from the date of the order of commitment.

Code 1950, § 16.1-183; 1956, c. 555; 1977, c. 559.

§ 16.1-289.1. Motions to reconsider orders for participation in continuing programs.

When a person is ordered to participate in therapy, counseling or similar continuing programs, a motion may be filed with the court to reconsider the order, whether interlocutory or final, or the terms and conditions of participation at any time after the order is entered. The motion shall be heard within thirty days. Any order disposing of such motion shall be deemed to be a final order for purposes of appeal pursuant to Article 11 (§ 16.1-296 et seq.), of this chapter.

1988, c. 771.

§ 16.1-290. Support of committed juvenile; support from estate of juvenile.

A. Whenever (i) legal custody of a juvenile is vested by the court in someone other than his parents or (ii) a juvenile is placed in temporary shelter care regardless of whether or not legal custody is retained by his parents, after due notice in writing to the parents, the court, pursuant to §§ 20-108.1 and 20-

108.2, or the Department of Social Services, pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, shall order the parents to pay support to the Department of Social Services. If the parents fail or refuse to pay such support, the court may proceed against them for contempt, or the order may be filed and shall have the effect of a civil judgment. The provisions of this subsection shall not apply to a juvenile who is committed to the Department pursuant to subdivision A 14 or A 17 of § 16.1-278.8.

B. If a juvenile has an estate in the hands of a guardian or trustee, the guardian or trustee may be required to pay for his education and maintenance so long as there may be funds for that purpose.

C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the parents shall pay the Department of Social Services pursuant to §§ 20-108.1, 20-108.2, 63.2-909, and 63.2-1910.

Code 1950, §§ 16.1-184, 16.1-185; 1956, c. 555; 1972, c. 177; 1977, c. 559; 1995, cc. 448, 817; 1996, cc. 755, 914; 2003, c. 579; 2006, c. 282; 2021, Sp. Sess. I, c. 283; 2022, cc. 414, 415.

§ 16.1-290.1. Payment for court-ordered counseling, treatment or programs.

The court shall order the participant in any treatment, counseling or other program for the rehabilitation of a minor child or his family to pay as much of the applicable fee for participation as such person is able to pay. A finding of guilt shall not be required for the court so to order payment.

2004, c. 573.

§ 16.1-290.2. Certain information to be made available to certain defendants found not guilty.

In any case in which a defendant is found not guilty of any offense after a trial in a juvenile and domestic relations district court at which evidence of the defendant's mental condition at the time of the alleged offense was introduced in accordance with § 19.2-271.6, the court shall make available to the defendant information provided by the community services board in accordance with § 37.2-513 regarding services provided by the community services board and how such services may be accessed.

2023, cc. 217, 218.

Article 10 - PROBATION AND PAROLE

§ 16.1-291. Revocation or modification of probation, protective supervision or parole; proceedings; disposition.

A. A juvenile or person who violates an order of the juvenile court entered into pursuant to §§ 16.1-278.2 through 16.1-278.10 or § 16.1-284, who violates the conditions of his probation granted pursuant to § 16.1-278.5 or 16.1-278.8, or who violates the conditions of his parole granted pursuant to § 16.1-285, 16.1-285.1 or 16.1-293, may be proceeded against for a revocation or modification of such order or parole status. A proceeding to revoke or modify probation, protective supervision or parole shall be commenced by the filing of a petition. Except as otherwise provided, such petitions shall be screened, reviewed and prepared in the same manner and shall contain the same information as provided in §§ 16.1-260 and 16.1-262. The petition shall recite the date that the juvenile or person

was placed on probation, under protective supervision or on parole and shall state the time and manner in which notice of the terms of probation, protective supervision or parole were given.

B. If a juvenile or person is found to have violated a prior order of the court or the terms of probation or parole, the court may, in accordance with the provisions of §§ 16.1-278.2 through 16.1-278.10, upon a revocation or modification hearing, modify or extend the terms of the order of probation or parole, including termination of probation or parole. However, notwithstanding the contempt power of the court as provided in § 16.1-292, the court shall be limited in the actions it may take to those that the court may have taken at the time of the court's original disposition pursuant to §§ 16.1-278.2 through 16.1-278.10, except as hereinafter provided.

C. In the event that a child in need of supervision is found to have willfully and materially violated an order of the court or the terms of his probation granted pursuant to § 16.1-278.5, in addition to or in lieu of the dispositions specified in that section, the court may enter any of the following orders of disposition:

1. Suspend the child's driver's license upon terms and conditions which may include the issuance of a restricted license for those purposes set forth in subsection E of § 18.2-271.1; or

2. Order any such child fourteen years of age or older to be (i) placed in a foster home, group home or other nonsecure residential facility, or, (ii) if the court finds that such placement is not likely to meet the child's needs, that all other treatment options in the community have been exhausted, and that secure placement is necessary in order to meet the child's service needs, detained in a secure facility for a period of time not to exceed ten consecutive days for violation of any order of the court or violation of probation arising out of the same petition. The court shall state in its order for detention the basis for all findings required by this section. When any child is detained in a secure facility pursuant to this section, the court shall direct the agency evaluating the child pursuant to § 16.1-278.5 to reconvene the interdisciplinary team participating in such evaluation, develop further treatment plans as may be appropriate and submit its report to the court of its determination as to further treatment efforts either during or following the period the child is in secure detention. A child may only be detained pursuant to this section in a detention home or other secure facility in compliance with standards established by the State Board. Any order issued pursuant to this subsection is a final order and is appealable as provided by law.

D. Nothing in this section shall be construed to reclassify a child in need of supervision as a delinquent.

E. If a person adjudicated delinquent and found to have violated an order of the court or the terms of his probation or parole was a juvenile at the time of the original offense and is eighteen years of age or older when the court enters disposition for violation of the order of the court or the terms of his probation or parole, the dispositional alternative specified in § 16.1-284 shall be available to the court.

Code 1950, § 16.1-188; 1956, c. 555; 1977, c. 559; 1991, c. 534; 1992, c. 90; 2001, c. 853; 2016, c. 626.

§ 16.1-292. Violation of court order by any person.

A. Any person violating an order of the juvenile court entered pursuant to §§ 16.1-278.2 through 16.1-278.19 or § 16.1-284, including a parent subject to an order issued pursuant to subdivision A 3 of § 16.1-278.8, may be proceeded against (i) by an order requiring the person to show cause why the order of the court entered pursuant to §§ 16.1-278.2 through 16.1-278.19 has not been complied with, (ii) for contempt of court pursuant to § 16.1-69.24 or as otherwise provided in this section, or (iii) by both. Except as otherwise expressly provided herein, nothing in this chapter shall deprive the court of its power to punish summarily for contempt for such acts as set forth in § 18.2-456, or to punish for contempt after notice and an opportunity for a hearing on the contempt except that confinement in the case of a juvenile shall be in a secure facility for juveniles rather than in jail and shall not exceed a period of seven days for each offense. However, if the person violating the order was a juvenile at the time of the original act and is 18 years of age or older when the court enters a disposition for violation of the order, the judge may order confinement in jail. If a juvenile is found to have violated a court order as a status offender, any order of disposition of such violation confining the juvenile in a secure facility for juveniles shall (a) identify the valid court order that has been violated; (b) specify the factual basis for determining that there is reasonable cause to believe that the juvenile has violated such order; (c) state the findings of fact that support a determination that there is no appropriate less restrictive alternative available to placing the juvenile in such a facility, with due consideration to the best interest of the juvenile; (d) specify the length of time of such confinement, not to exceed seven days; and (e) include a plan for the juvenile's release from such facility. Such order of confinement shall not be renewed or extended.

B. Upon conviction of any party for contempt of court in failing or refusing to comply with an order of a juvenile court for spousal support or child support under § 16.1-278.15, the court may commit and sentence such party to confinement in a jail, workhouse, city farm, or work squad as provided in §§ 20-61 and 20-62, for a fixed or indeterminate period or until the further order of the court. In no event, however, shall such sentence be imposed for a period of more than 12 months. The sum or sums as provided for in § 20-63 shall be paid as therein set forth, to be used for the support and maintenance of the spouse or the child or children for whose benefit such order or decree provided.

C. Notwithstanding the contempt power of the court, the court shall be limited in the actions it may take with respect to a child violating the terms and conditions of an order to those which the court could have taken at the time of the court's original disposition pursuant to §§ 16.1-278.2 through 16.1-278.10, except as hereinafter provided. However, this limitation shall not be construed to deprive the court of its power to (i) punish a child summarily for contempt for acts set forth in § 18.2-456 subject to the provisions of subsection A or (ii) punish a child for contempt for violation of a dispositional order in a delinquency proceeding after notice and an opportunity for a hearing regarding such contempt, including acts of disobedience of the court's dispositional order which are committed outside the presence of the court.

D. In the event a child in need of services is found to have willfully and materially violated for a second or subsequent time the order of the court pursuant to § 16.1-278.4, the dispositional alternatives specified in subdivision A 9 of § 16.1-278.8 shall be available to the court.

E. In the event that a child in need of supervision is found to have willfully and materially violated an order of the court pursuant to § 16.1-278.5, the court may enter any of the following orders of disposition:

1. Suspend the child's motor vehicle driver's license;

2. Order any such child 14 years of age or older to be (i) placed in a foster home, group home, or other nonsecure residential facility or, (ii) if the court finds that such placement is not likely to meet the child's needs, that all other treatment options in the community have been exhausted, and that secure placement is necessary in order to meet the child's service needs, detained in a secure facility for a period of time not to exceed seven consecutive days for violation of any order of the court arising out of the same petition. The court shall state in its order for detention the basis for all findings required by this section. In addition, any order of disposition for such violation confining the child in a secure facility for juveniles shall (a) identify the valid court order that has been violated; (b) specify the factual basis for determining that there is reasonable cause to believe that the child has violated such order; (c) state the findings of fact that support a determination that there is no appropriate less restrictive alternative available to placing the child in such a facility, with due consideration to the best interest of the child; (d) specify the length of time of such confinement, not to exceed seven days; and (e) include a plan for the child's release from such facility. Such order of confinement shall not be renewed or extended. When any child is detained in a secure facility pursuant to this section, the court shall direct the agency evaluating the child pursuant to § 16.1-278.5 to reconvene the interdisciplinary team participating in such evaluation as promptly as possible to review its evaluation, develop further treatment plans as may be appropriate and submit its report to the court for its determination as to further treatment efforts either during or following the period the child is in secure detention. A juvenile may only be detained pursuant to this section in a detention home or other secure facility in compliance with standards established by the State Board. Any order issued pursuant to this subsection is a final order and is appealable to the circuit court as provided by law.

F. Nothing in this section shall be construed to reclassify a child in need of services or in need of supervision as a delinquent.

1977, c. 559; 1983, c. 501; 1985, cc. 1, 260; 1987, c. 632; 1988, c. 771; 1989, c. 725; 1990, c. 110; 1991, c. 534; 1993, c. 632; 1994, c. 21; 2000, c. 978; 2016, c. 626; 2020, c. 593.

§ 16.1-293. Supervision of juvenile or person during commitment and on parole; placing juvenile in halfway house.

At such time as the court commits a juvenile to the Department, the juvenile and domestic relations district court service unit shall maintain contact with the juvenile during the juvenile's commitment.

If a person is placed on parole supervision following that person's release from commitment to the Department, the court services unit providing parole supervision shall furnish the person a written statement of the conditions of his parole and shall instruct him regarding the same. The conditions of the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by the court pursuant to § 16.1-291. If the parole supervision is for an indeterminate period of time, the director of the supervising court services unit may approve termination of parole supervision.

The Department shall notify the school division superintendent in the locality where the person was enrolled of his commitment to a facility. The court services unit shall, in consultation with the local school division, the Department's Division of Education and the juvenile correctional counselor, develop a reenrollment plan if the person is of compulsory school attendance age or is eligible for special education services pursuant to § 22.1-213. The reenrollment plan shall be in accordance with regulations adopted by the Board of Education pursuant to § 22.1-17.1. The superintendent shall provide the person's scholastic records, as defined in § 22.1-289, and the terms and conditions of any expulsion which was in effect at the time of commitment or which will be in effect upon release. A court may not order a local school board to reenroll a person who has been expelled in accordance with the procedures set forth in § 22.1-277.06. At least 14 days prior to the person's scheduled release, the Department shall notify the school division superintendent in the locality where the person will reside.

In the event it is determined by the juvenile and domestic relations district court that a person may benefit from placement in the halfway house program operated by the Department, the person may be referred for care and treatment to a halfway house. Persons so placed in a halfway house shall remain in parole status and cannot be transferred or otherwise placed in another institutional setting or institutional placement operated by the Department except as elsewhere provided by law for those persons who have violated their parole status.

In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department and has not attained the age of 18 years, the local department of social services shall resume custody upon the person's release from commitment, unless an alternative arrangement for the custody of the person has been made and communicated in writing to the Department. At least 90 days prior to the person's release from commitment on parole supervision, (i) the court services unit shall consult with the local department of social services concerning return of the person to the locality and the placement of the person and (ii) the local department of social services and the court services unit shall collaborate to develop a plan that prepares the person for successful transition from the Department's commitment to the custody of the local department of social services or to an alternative custody arrangement if applicable. The plan shall identify the services necessary for such transition and how the services are to be provided. The court services unit will be responsible for supervising the person's terms and conditions of parole.

In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department, is between 18 and 21 years of age, provides written notice of his intent to receive independent living services to the local department of social services, and

enters into a written agreement with the local department of social services as set forth in § 63.2-905.1, the person shall be eligible to receive independent living services from the local department or a child-placing agency pursuant to § 63.2-905.1. At least 90 days prior to the person's release from commitment on parole supervision, (i) the court services unit shall inform the person of the availability of independent living services and shall consult with the local department of social services concerning return of the person to the locality and living arrangements for the person and (ii) the local department of social services and the court services unit shall work collaboratively to develop a plan for the successful transition of the person from the custody of the Department to independent living, which shall identify the services necessary to facilitate the person's transition to independent living and describe how the necessary services shall be provided.

In all cases in which a person who is in the custody of the local department of social services is committed to the Department, the local department of social services and the Department shall work cooperatively through the duration of the person's commitment to ensure communication of information regarding the status of the person and to facilitate transition planning for the person prior to his release.

Code 1950, § 16.1-210; 1956, c. 555; 1962, c. 628; 1972, cc. 73, 708; 1973, cc. 440, 546; 1977, c. 559; 1980, c. 217; 1981, c. 487; 1985, c. 203; 1988, c. 453; 1996, cc. 755, 914, 916, 1000; 2001, cc. 688, 820, 853; 2010, c. 742; 2011, cc. 39, 442; 2012, cc. 803, 835; 2013, cc. 362, 564.

§ 16.1-293.1. Mental health services transition plan.

A. The Board of Juvenile Justice, after consultation with the Department of Behavioral Health and Developmental Services, shall promulgate regulations for the planning and provision of post-release services for persons committed to the Department of Juvenile Justice pursuant to subdivision A 14 of § 16.1-278.8 or placed in a postdispositional detention program pursuant to subsection B of § 16.1-284.1 and identified as having a recognized mental health, substance abuse, or other therapeutic treatment need. The plan shall be in writing and completed prior to the person's release. The purpose of the plan shall be to ensure continuity of necessary treatment and services.

B. The mental health services transition plan shall identify the mental health, substance abuse, or other therapeutic needs of the person being released. Appropriate treatment providers and other persons from state and local agencies or entities, as defined by the Board, shall participate in the development of the plan. Appropriate family members, caregivers, or other persons, as defined by the Board, shall be invited to participate in the development of the person's plan.

C. Prior to the person's release from incarceration, the identified agency or agencies responsible for the case management of the mental health services transition plan shall make the necessary referrals specified in the plan and assist the person in applying for insurance and other services identified in the plan, including completing and submitting applications that may only be submitted upon release.

2005, cc. 334, 405; 2009, cc. 813, 840.

§ 16.1-294. Placing child on parole in foster home or with institution; how cost paid.

When the child is returned to the custody of the court for parole supervision by the court service unit or the local department of social services for supervision, and, after a full investigation, the court is of the opinion that the child should not be placed in his home or is in need of treatment, and there are no funds available to board and maintain the child or to purchase the needed treatment services, the court service unit or the local department of social services shall arrange with the Director of the Department of Juvenile Justice for the boarding of the child in a foster home or with any private institution, society or association or for the purchase of treatment services. In determining the proper placement for such a child, the Department may refer the child to the locality's family assessment and planning team for assessment and recommendation for services. The cost of maintaining such child shall be paid monthly, according to schedules prepared and adopted by the Department, out of funds appropriated for such purposes. Treatment services for such child shall be paid from funds appropriated to the Department for such purpose.

Code 1950, § 16.1-211; 1956, c. 555; 1972, cc. 73, 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1982, c. 636; 1983, c. 358; 1985, c. 203; 1988, c. 376; 1989, c. 733; 1992, cc. 837, 880; 2002, c. 747.

§ 16.1-295. Transfer of supervision from one county or city to another, or to another state.

If any person on probation to or under the supervision of any juvenile probation officer or other officer of the court removes his residence or place of abode from the county or city in which he was so placed on probation or under supervision to another county or city in the Commonwealth, the court in the city or county from which he removed his residence or place of abode may then arrange the transfer of the supervision to the city or county to which he moves his place of residence or abode, or such transfer may be ordered by the transferring court.

The Director of the Department of Juvenile Justice may make provision for the transfer of a juvenile placed on probation in this Commonwealth to another state to be there placed on probation under the terms of Article 4 (§ 53.1-166 et seq.) of Chapter 4 of Title 53.1.

The costs of returning juveniles on probation or parole to their places of residence, whether within or outside of this Commonwealth, shall be paid in accordance with regulations established by the State Board from funds appropriated in the general appropriation act for criminal costs.

Code 1950, § 16.1-212; 1956, c. 555; 1972, c. 708; 1973, c. 546; 1974, cc. 44, 45; 1977, c. 559; 1989, c. 733.

Article 11 - Appeal

§ 16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken to the circuit court within 10 days from the entry of a final judgment, order, or conviction and shall be heard de novo. In any such case, a copy of the notice of appeal shall be served consistent with Rule 1:12 of the Rules of Supreme Court of Virginia by the appealing party upon the opposing party or each counsel of record. The failure of the appealing party to properly serve the notice of appeal shall not affect the validity of an otherwise proper appeal.

However, if the court determines that the appealing party failed to properly serve a copy of the notice of appeal upon an opposing party, the court may, on its own motion, (i) continue any hearing on such appeal or (ii) dismiss such appeal absent a showing of good cause by the appealing party.

A1. In a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within 30 days from entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

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

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of 12 persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or 16.1-273.

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

C2. Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8 and the juvenile is in a secure facility pending the appeal, the circuit court, when practicable, shall hold a hearing on the merits of the case within 45 days of the filing of the appeal. Upon receipt of the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order and a copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt of notice of an appeal. The time limitations shall be tolled during any period in which the juvenile has escaped from custody. A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within 90 days of the perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.

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

F. In all other cases on appeal, proceedings in the circuit court shall be heard without a jury; however, hearing of an issue by an advisory jury may be allowed, in the discretion of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the circuit court from the district courts and shall be assigned a case number within two business days of receipt of such appeal.

If a party files an appeal of a district court order of protection entered pursuant to § 16.1-279.1, such notice of appeal shall be on a form prescribed by the Office of the Executive Secretary. The district court clerk shall contact the appellate court to determine whether the hearing on the appeal shall be set by the appellate court on (i) a date scheduled by the district court clerk with the court, (ii) on the next docket call date, or (iii) a date set for district court appeals. Once the hearing date is set and the appeal documents have been transmitted, the appellate court shall have the parties served with notice of the appeal stating the date and time of the hearing in accordance with subdivision 1 of § 8.01-296. No such hearing on the appeal shall be heard in the appellate court unless the appellee has been so served with such notice or notice has been waived by the non-moving party.

G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court, except that the appeal to circuit court of any case in which a fee either was or could have been assessed pursuant to § 16.1-69.48:5 shall also be in accordance with § 16.1-296.2.

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient

surety to secure the payment of prospective support accruing during the pendency of the appeal. An appeal will not be perfected unless such appeal bond as may be required is filed within 30 days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal. The provisions of § 16.1-109 shall apply to bonds required pursuant to this subsection.

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

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

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

Code 1950, § 16.1-214; 1956, c. 555; 1966, c. 237; 1977, c. 559; 1978, c. 445; 1981, c. 109; 1982, c. 465; 1983, c. 88; 1984, c. 631; 1986, cc. 143, 465; 1989, c. 473; 1991, c. 534; 1993, c. 970; 1994, c. 673; 1995, c. 517; 1996, c. 866; 1997, cc. 654, 664, 790, 862; 1998, c. 550; 2004, cc. 468, 659, 727; 2005, c. 681; 2007, c. 464; 2009, c. 729; 2019, c. 718; 2020, c. 905; 2023, c. 788.

§ 16.1-296.1. Repealed.

Repealed by Acts 1999, c. 161.

§ 16.1-296.2. Appeals of certain custody and visitation proceedings.

A. In any matter in which a filing fee either was or could have been assessed pursuant to § 16.1-69.48:5, no appeal shall be allowed unless and until the party applying for appeal shall, within 10 days from the entry of the final judgment or order, either (i) pay to the clerk of the court from which the appeal is taken the amount of the writ tax of the court to which the appeal is taken and all other applicable costs or (ii) file with the clerk of the court from which the appeal is taken a petition to have the court to which the appeal is taken determine that the writ tax and costs need not be paid on account of poverty as provided in § 17.1-606. The judge or clerk of any court from which the appeal is taken shall promptly transmit to the clerk of the appellate court the original pleadings, together with all exhibits and other papers filed in the trial of the case, and either (i) the writ tax and costs paid or (ii) a petition

filed to have the court to which the appeal is taken determine that the writ tax and costs need not be paid on account of poverty as provided in § 17.1-606. Upon receipt of the foregoing by the clerk of the appellate court, the case shall then be docketed.

B. Notwithstanding any other provision of law, the writ tax of the court to which the appeal is taken and other applicable costs shall be assessed only once for all custody and visitation petitions simultaneously appealed by a single appellant.

2004, cc. 659, 727.

§ 16.1-297. Final judgment; copy filed with juvenile court; proceeding may be remanded to juvenile court.

Upon the rendition of final judgment upon an appeal from the juvenile and domestic relations district court, the circuit court shall cause a copy of its judgment to be filed with the juvenile court within twenty-one days of entry of its order, which shall thereupon become the judgment of the juvenile court. In the event such circuit court does not dismiss the proceedings or discharge such child or adult, the circuit court may remand the child or adult to the jurisdiction of the juvenile court for its supervision and care, under the terms of its order or judgment, and thereafter such child or adult shall be and remain under the jurisdiction of the juvenile court in the same manner as if such court had rendered the judgment in the first instance.

Code 1950, § 16.1-215; 1956, c. 555; 1977, c. 559; 1996, c. 828.

§ 16.1-298. Effect of petition for or pendency of appeal; bail.

A. Except as provided herein, a petition for or the pendency of an appeal or writ of error shall not suspend any judgment, order or decree of the juvenile court nor operate to discharge any child concerned or involved in the case from the custody of the court or other person, institution or agency to which the child has been committed unless so ordered by the judge of the juvenile court, the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a judge or justice thereof.

B. The judgment, order or decree of the juvenile court shall be suspended upon a petition for or the pendency of an appeal or writ of error:

1. In cases of delinquency in which the final order of the juvenile court is pursuant to subdivision A 8, 9, 10, 12, 14, or 15 of § 16.1-278.8.

2. In cases involving a child and any local ordinance.

3. In cases involving any person over the age of 18 years.

Such suspension as is provided for in this subsection shall not apply to (i) an order for support of a spouse, parent or child or to a preliminary protective order issued pursuant to § 16.1-253, (ii) an order disposing of a motion to reconsider relating to participation in continuing programs pursuant to § 16.1-289.1, (iii) a protective order in cases of family abuse issued pursuant to § 16.1-279.1, including a protective order required by § 16.1-253.2, or a protective order entered in conjunction with a disposition

pursuant to § 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6, 16.1-278.8, or 16.1-278.14, (iv) a protective order issued pursuant to § 19.2-152.10, including a protective order required by § 18.2-60.4, or (v) an order pertaining to the custody, visitation, or placement of a minor child, unless so ordered by the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

C. In cases where the order of the juvenile court is suspended pursuant to subsection B hereof or by order of the juvenile court or the circuit court, bail may be required as provided for in § 16.1-135.

D. If an appeal to the circuit court is withdrawn in accordance with § 16.1-106.1, the judgment, order, or decree rendered by the juvenile court shall have the same legal effect as if no appeal had been noted, except as to the disposition of any bond in circuit court or as modified by the circuit court pursuant to subsection F of § 16.1-106.1. If an appeal is withdrawn, any court-appointed counsel or court-appointed guardian ad litem shall, absent further order of the court, be relieved of any further obligation respecting the matter for which they were appointed.

E. Except as to matters pending on the docket of a circuit court as of July 1, 2008, all orders that were entered by a juvenile and domestic relations district court prior to July 1, 2008, and appealed to a circuit court, where the appeal was withdrawn, shall have the same effect as if no appeal had been noted.

Code 1950, § 16.1-216; 1956, c. 555; 1966, c. 224; 1977, c. 559; 1984, cc. 631, 703; 1988, c. 771; 1991, c. 534; 1996, c. 866; 1997, c. 831; 1998, c. 550; 2008, c. 706; 2013, cc. 73, 97.

Article 12 - CONFIDENTIALITY AND EXPUNGEMENT

§ 16.1-299. Fingerprints and photographs of juveniles.

A. All duly constituted police authorities having the power of arrest shall take fingerprints and photographs of any juvenile who is taken into custody and charged with a delinquent act an arrest for which, if committed by an adult, is required to be reported to the Central Criminal Records Exchange pursuant to subsection A of § 19.2-390. Whenever fingerprints are taken, they shall be maintained separately from adult records and a copy shall be filed with the juvenile court on forms provided by the Central Criminal Records Exchange.

B. If a juvenile of any age (i) is convicted of a felony, (ii) is adjudicated delinquent of an offense that would be a felony if committed by an adult, (iii) has a case involving an offense, which would be a felony if committed by an adult, that is dismissed pursuant to the deferred disposition provisions of § 16.1-278.8, or (iv) is convicted or adjudicated delinquent of any other offense for which a report to the Central Criminal Records Exchange is required by subsection C of § 19.2-390 if the offense were committed by an adult, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange and to the jurisdiction making the arrest by the clerk of the court which heard the case.

C. If a petition or warrant is not filed against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed 60 days after fingerprints were taken. If a juvenile charged with a delinquent act other than a violent juvenile felony or a crime ancillary thereto is found not guilty, or in any other case resulting in a disposition for which fingerprints are not required to be forwarded to the Central Criminal Records Exchange, the court shall order that the fingerprint card, all copies of the fingerprints and all photographs be destroyed within six months of the date of disposition of the case.

1977, c. 559; 1978, c. 383; 1979, c. 267; 1982, c. 514; 1985, c. 211; 1986, c. 264; 1993, cc. 468, 926; 1994, cc. 859, 949; 1996, cc. 755, 914; 1997, c. 657; 2000, c. 431; 2004, c. 464; 2008, c. 636.

§ 16.1-299.1. Sample required for DNA analysis upon conviction or adjudication of felony.

A juvenile convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult shall have a sample of his blood, saliva or tissue taken for DNA analysis provided the juvenile was 14 years of age or older at the time of the commission of the offense.

The provisions of Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18 of Title 19.2 shall apply to all persons and all DNA samples taken as required by this section, mutatis mutandis.

The Department of Juvenile Justice shall verify that a DNA sample required to be taken has been received by the Department of Forensic Science. In any case where a DNA sample has not been received, the Department of Juvenile Justice shall notify the court and the court shall require the person to submit a sample for DNA analysis.

1996, cc. 755, 914; 1998, c. 280; 2003, cc. 150, 607; 2007, c. 528.

§ 16.1-299.2. Repealed.

Repealed by Acts 2005, c. 843, cl. 2.

§ 16.1-300. Confidentiality of Department records.

A. The social, medical, psychiatric, and psychological reports and records of children who are or have been (i) before the court, (ii) under supervision, (iii) referred to a court service unit, or (iv) receiving services from a court service unit or who are committed to the Department of Juvenile Justice shall be confidential and shall be open for inspection only to the following:

1. The judge, prosecuting attorney, probation officers and professional staff assigned to serve a court having the child currently before it in any proceeding;

2. Any public agency, child welfare agency, private organization, facility or person who is treating or providing services to the child pursuant to a contract with the Department or pursuant to the Virginia Juvenile Community Crime Control Act as set out in Article 12.1 (§ 16.1-309.2 et seq.);

3. The child's parent, guardian, legal custodian or other person standing in loco parentis and the child's attorney;

4. Any person who has reached the age of majority and requests access to his own records or reports;

5. Any state agency providing funds to the Department of Juvenile Justice and required by the federal government to monitor or audit the effectiveness of programs for the benefit of juveniles which are financed in whole or in part by federal funds;

6. The Department of Social Services or any local department of social services that is providing services or care for, or has accepted a referral for family assessment or investigation and the provision of services in accordance with subsection A of § 16.1-277.02 regarding, a juvenile who is the subject of the record and the Department of Behavioral Health and Developmental Services or any local community services board that is providing treatment, services, or care for a juvenile who is the subject of the record for a purpose relevant to the provision of the treatment, services, or care when these local agencies have entered into a formal agreement with the Department of Juvenile Justice to provide coordinated services to juveniles who are the subject of the records. Prior to making any report or record open for inspection, the court service unit or Department of Juvenile Justice shall determine which reports or records are relevant to the treatment, services, or care of such juvenile and shall limit such inspection to such relevant reports or records. Any local department of social services or local community services board that inspects any social, medical, psychiatric, and psychological reports and records of juveniles in accordance with this subdivision shall not disseminate any information received from such inspection unless such dissemination is expressly required by law;

7. Any other person, agency or institution, including any law-enforcement agency, school administration, or probation office by order of the court, having a legitimate interest in the case, the juvenile, or in the work of the court;

8. Any person, agency, or institution, in any state, having a legitimate interest (i) when release of the confidential information is for the provision of treatment or rehabilitation services for the juvenile who is the subject of the information, (ii) when the requesting party has custody or is providing supervision for a juvenile and the release of the confidential information is in the interest of maintaining security in a secure facility, as defined by § 16.1-228 if the facility is located in Virginia, or as similarly defined by the law of the state in which such facility is located if it is not located in Virginia, or (iii) when release of the confidential information is for consideration of admission to any group home, residential facility, or postdispositional facility, and copies of the records in the custody of such home or facility shall be destroyed if the child is not admitted to the home or facility;

9. Any attorney for the Commonwealth, any pretrial services officer, local community-based probation officer and adult probation and parole officer for the purpose of preparing pretrial investigation, including risk assessment instruments, presentence reports, including those provided in § 19.2-299, discretionary sentencing guidelines worksheets, including related risk assessment instruments, as directed by the court pursuant to subsection C of § 19.2-298.01 or any court-ordered post-sentence investigation report;

10. Any person, agency, organization or institution outside the Department that, at the Department's request, is conducting research or evaluation on the work of the Department or any of its divisions; or

any state criminal justice agency that is conducting research, provided that the agency agrees that all information received shall be kept confidential, or released or published only in aggregate form;

11. With the exception of medical, psychiatric, and psychological records and reports, any full-time or part-time employee of the Department of State Police or of a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the enforcement of the penal, traffic, or motor vehicle laws of the Commonwealth, is entitled to any information related to a criminal street gang, including that a person is a member of a criminal street gang as defined in § 18.2-46.1. Information shall be provided by the Department to law enforcement without their request to aid in initiating an investigation or assist in an ongoing investigation of a criminal street gang as defined in § 18.2-46.1. This information may also be disclosed, at the Department's discretion, to a gang task force, provided that the membership (i) consists of only representatives of state or local government or (ii) includes a law-enforcement officer who is present at the time of the disclosure of the information. The Department shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. No person who obtains information pursuant to this subdivision shall divulge such information except in connection with gang-activity intervention and prevention, a criminal investigation regarding a criminal street gang as defined in § 18.2-46.1 that is authorized by the Attorney General or by the attorney for the Commonwealth, or in connection with a prosecution or proceeding in court;

12. The Commonwealth's Attorneys' Services Council and any attorney for the Commonwealth, as permitted under subsection B of § 66-3.2;

13. Any state or local correctional facility as defined in § 53.1-1 when such facility has custody of or is providing supervision for a person convicted as an adult who is the subject of the reports and records. The reports and records shall remain confidential and shall be open for inspection only in accordance with this section; and

14. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

A designated individual treating or responsible for the treatment of a person may inspect such reports and records as are kept by the Department on such person or receive copies thereof, when the person who is the subject of the reports and records or his parent, guardian, legal custodian or other person standing in loco parentis if the person is under the age of 18, provides written authorization to the Department prior to the release of such reports and records for inspection or copying to the designated individual.

B. The Department may withhold from inspection by a child's parent, guardian, legal custodian or other person standing in loco parentis that portion of the records referred to in subsection A, when the staff of the Department determines, in its discretion, that disclosure of such information would be detrimental to the child or to a third party, provided that the juvenile and domestic relations district court (i)

having jurisdiction over the facility where the child is currently placed or (ii) that last had jurisdiction over the child if such child is no longer in the custody or under the supervision of the Department shall concur in such determination.

If any person authorized under subsection A to inspect Department records requests to inspect the reports and records and if the Department withholds from inspection any portion of such record or report pursuant to the preceding provisions, the Department shall (a) inform the individual making the request of the action taken to withhold any information and the reasons for such action; (b) provide such individual with as much information as is deemed appropriate under the circumstances; and (c) notify the individual in writing at the time of the request of his right to request judicial review of the Department's decision. The circuit court (1) having jurisdiction over the facility where the child is currently placed or (2) that had jurisdiction over the original proceeding or over an appeal of the juvenile and domestic relations district court final order of disposition concerning the child if such child is no longer in the custody or under the supervision of the Department shall have jurisdiction over petitions filed for review of the Department's decision to withhold reports or records as provided herein.

1977, c. 559; 1978, cc. 738, 740; 1981, c. 487; 1988, c. 541; 1989, c. 733; 1994, c. 19; 2000, c. 212; 2002, c. 735; 2003, cc. 108, 143; 2006, cc. 431, 500; 2007, c. 511; 2009, c. 740; 2010, cc. 367, 472; 2011, cc. 99, 169; 2012, cc. 262, 421; 2017, cc. 207, 210; 2021, Sp. Sess. I, c. 466.

§ 16.1-301. Confidentiality of juvenile law-enforcement records; disclosures to school principal and others.

A. The court shall require all law-enforcement agencies to take special precautions to ensure that law-enforcement records concerning a juvenile are protected against disclosure to any unauthorized person. The police departments of the cities of the Commonwealth, and the police departments or sheriffs of the counties of the Commonwealth, as the case may be, shall keep separate records as to violations of law committed by juveniles other than violations of motor vehicle laws. Such records with respect to such juvenile shall not be open to public inspection nor their contents disclosed to the public unless a juvenile 14 years of age or older is charged with a violent juvenile felony as specified in subsections B and C of § 16.1-269.1.

B. Notwithstanding any other provision of law, the chief of police or sheriff of a jurisdiction or his designee shall disclose, for the protection of the juvenile, his fellow students and school personnel, to the school principal that a juvenile has been charged with or may disclose when a juvenile is a suspect in (i) a violent juvenile felony, as specified in subsections B and C of § 16.1-269.1; (ii) a violation of any of the provisions of Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; (iii) a violation of law involving any weapon as described in subsection A of § 18.2-308; or (iv) a violation of law as described in subsection G of § 16.1-260. If a chief of police or sheriff or a designee has disclosed to a school principal pursuant to this section that a juvenile is a suspect in or has been charged with a crime as specified in clauses (i) through (iv), upon a court disposition of a proceeding regarding such crime in which a juvenile is adjudicated delinquent, convicted, found not guilty or the charges are reduced, the chief of police or sheriff or a designee shall, within 15 days of the expiration of the appeal

period, if there is no notice of appeal, provide notice of the disposition ordered by the court to the school principal to whom disclosure was made. If the court defers disposition or if charges are withdrawn, dismissed or nolle prosequi, the chief of police or sheriff or a designee shall, within 15 days of such action provide notice of such action to the school principal to whom disclosure was made. If charges are withdrawn in intake or handled informally without a court disposition or if charges are not filed within 90 days of the initial disclosure, the chief of police or sheriff or a designee shall so notify the school principal to whom disclosure was made. In addition to any other disclosure that is permitted by this subsection, the principal in his discretion may provide such information to a threat assessment team established by the local school division. No member of a threat assessment team shall (a) disclose any juvenile record information obtained pursuant to this section or (b) use such information for any purpose other than evaluating threats to students and school personnel. For the purposes of this subsection, "principal" also refers to the chief administrator of any private primary or secondary school.

C. Inspection of law-enforcement records concerning juveniles shall be permitted only by the following:

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

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

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

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

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

6. The juvenile, the parent, guardian, or other custodian of the juvenile, and counsel for the juvenile only if (i) no other law or rule of the Supreme Court of Virginia requires or allows withholding of the record; (ii) the parent, guardian, or other custodian requesting the record is not a suspect, offender, or person of interest in the record; and (iii) any identifying information of any other involved juveniles is redacted; and

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

D. The police departments of the cities and towns and the police departments or sheriffs of the counties may release, upon request to one another and to state and federal law-enforcement agencies, and to law-enforcement agencies in other states, current information on juvenile arrests. The information exchanged shall be used by the receiving agency for current investigation purposes only

and shall not result in the creation of new files or records on individual juveniles on the part of the receiving agency.

E. Upon request, the police departments of the cities and towns and the police departments or sheriffs of the counties may release current information on juvenile arrests or juvenile victims to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose than provided in § 19.2-368.3.

F. Nothing in this section shall prohibit the exchange of other criminal investigative or intelligence information among law-enforcement agencies.

G. Nothing in this section shall prohibit the disclosure of law-enforcement records concerning a juvenile to a court services unit-authorized diversion program in accordance with this chapter, which includes programs authorized by subdivision 1 of § 16.1-227 and § 16.1-260. Such records shall not be further disclosed by the authorized diversion program or any participants therein. Law-enforcement officers may prohibit a disclosure to such a program to protect a criminal investigation or intelligence information.

H. Nothing in this section shall prohibit the disclosure of accident reports and other reports required to be made to the Department of Motor Vehicles pursuant to § 46.2-374 involving a juvenile even if such reports are in the custody of a law-enforcement agency or were created by a law-enforcement officer.

Code 1950, § 16.1-163; 1956, c. 555; 1977, cc. 559, 618; 1978, c. 740; 1981, c. 175; 1993, cc. 468, 926; 1994, cc. 859, 949; 1995, c. 752; 1996, cc. 755, 914; 1997, c. 430; 2000, c. 211; 2001, c. 770; 2003, c. 119; 2005, c. 683; 2009, c. 286; 2013, c. 769; 2016, c. 234; 2022, cc. 455, 456, 542.

§ 16.1-302. Dockets, indices, and order books; when hearings and records private; right to public hearing; presence of juvenile in court.

A. Every juvenile court shall keep a separate docket of cases arising under this law.

B. Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order book or file for cases on appeal from the juvenile court except (i) cases involving support pursuant to § 20-61 or subdivision A 3 or subsection F or L of § 16.1-241; (ii) cases involving criminal offenses committed by adults which are commenced on a warrant or a summons as described in Title 19.2; and (iii) cases involving civil commitments of adults pursuant to Title 37.2. Such cases shall be docketed on the appropriate docket and the orders in such cases shall be entered in the appropriate order book as used with similar cases commenced in circuit court. In any child or spousal support case appealed to the circuit court, the case files shall be open for inspection only as provided by § 16.1-305.01.

C. The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper. However, proceedings in cases involving an adult charged with a crime and hearings held on a petition or warrant alleging that a juvenile fourteen years of age or older committed an offense which would be a felony if committed by an adult shall be open. Subject to the

provisions of subsection D for good cause shown, the court may, sua sponte or on motion of the accused or the attorney for the Commonwealth close the proceedings. If the proceedings are closed, the court shall state in writing its reasons and the statement shall be made a part of the public record.

D. In any hearing held for the purpose of adjudicating an alleged violation of any criminal law, or law defining a traffic infraction, the juvenile or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person. The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court appearance and admit to the infraction or infractions if he or she appears in person at the court or before a magistrate or signs and either mails or delivers to the court or magistrate a written form of appearance, plea, and waiver, provided that the written plea form containing the signature of the emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody of a child of tender years, the presence of such juvenile in court may be waived by the judge at any stage thereof.

Code 1950, § 16.1-162; 1956, c. 555; 1958, c. 353; 1971, Ex. Sess., c. 228; 1975, c. 334; 1977, cc. 559, 585; 1978, c. 605; 1979, c. 393; 1983, c. 293; 1996, cc. 755, 914; 2018, c. 18.

§ 16.1-302.1. Right of victim or representative to attend certain proceedings; notice of hearings.
During proceedings involving petitions or warrants alleging that a juvenile is delinquent, including proceedings on appeal, a victim may remain in the courtroom and shall not be excluded unless the court determines in its discretion, that the presence of the victim would impair the conduct of a fair trial. In any such case involving a minor victim, the court may permit an adult chosen by the minor victim to be present in the courtroom during the proceedings in addition to or in lieu of the minor's parent or guardian.

The attorney for the Commonwealth shall give prior notice of any such proceedings and changes in the scheduling thereof to any known victim and to any known adult chosen in accordance with this section by a minor victim at the address or telephone number, or both, provided in writing by such persons.

1996, cc. 755, 914; 2000, c. 339.

§ 16.1-303. Reports of court officials and employees when privileged.
All information obtained in discharge of official duties by any official or by any employee of the court shall be privileged, and shall not be disclosed to anyone other than the judge unless and until otherwise ordered by the judge or by the judge of a circuit court; provided, however, that in any case

when such information shall disclose that an offense has been committed which would be a felony if committed by an adult, it shall be the duty of the official or employee of the court obtaining such information to report the same promptly to the attorney for the Commonwealth or the police in the county, city or town where the offense occurred. It shall not be deemed a violation of this section if the disclosed information is otherwise available to the public.

Code 1950, § 16.1-209; 1956, c. 555; 1958, c. 354; 1977, c. 559; 1996, cc. 755, 914.

§ 16.1-304. Repealed.

Repealed by Acts 1983, c. 499.

§ 16.1-305. Confidentiality of court records.

A. Social, medical and psychiatric or psychological records, including reports or preliminary inquiries, predisposition studies and supervision records, of neglected and abused children, children in need of services, children in need of supervision and delinquent children shall be filed with the other papers in the juvenile's case file. All juvenile case files shall be filed separately from adult files and records of the court and shall be open for inspection only to the following:

1. The judge, probation officers and professional staff assigned to serve the juvenile and domestic relations district courts;

2. Representatives of a public or private agency or department providing supervision or having legal custody of the child or furnishing evaluation or treatment of the child ordered or requested by the court;

3. The attorney for any party, including the attorney for the Commonwealth;

4. Any other person, agency or institution, by order of the court, having a legitimate interest in the case or in the work of the court. However, for the purposes of an investigation conducted by a local community-based probation services agency, preparation of a pretrial investigation report, or of a presentence or postsentence report upon a finding of guilty in a circuit court or for the preparation of a background report for the Parole Board, adult probation and parole officers, including United States Probation and Pretrial Services Officers, any officer of a local pretrial services agency established or operated pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2, and any officer of a local community-based probation services agency established or operated pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) shall have access to an accused's or inmate's records in juvenile court without a court order and for the purpose of preparing the discretionary sentencing guidelines worksheets and related risk assessment instruments as directed by the court pursuant to subsection C of § 19.2-298.01, the attorney for the Commonwealth and any pretrial services or probation officer shall have access to the defendant's records in juvenile court without a court order;

5. Any attorney for the Commonwealth and any local pretrial services or community-based probation officer or state adult probation or parole officer shall have direct access to the defendant's juvenile court delinquency records maintained in an electronic format by the court for the strictly limited purposes of preparing a pretrial investigation report, including any related risk assessment instrument,

any presentence report, any discretionary sentencing guidelines worksheets, including related risk assessment instruments, any post-sentence investigation report or preparing for any transfer or sentencing hearing.

A copy of the court order of disposition in a delinquency case shall be provided to a probation officer or attorney for the Commonwealth, when requested for the purpose of calculating sentencing guidelines. The copies shall remain confidential, but reports may be prepared using the information contained therein as provided in §§ 19.2-298.01 and 19.2-299.

6. The Office of the Attorney General, for all criminal justice activities otherwise permitted and for purposes of performing duties required by Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

A1. Any person, agency, or institution that may inspect juvenile case files pursuant to subdivisions A 1 through 4 shall be authorized to have copies made of such records, subject to any restrictions, conditions, or prohibitions that the court may impose.

B. All or any part of the records enumerated in subsection A, or information secured from such records, which is presented to the judge in court or otherwise in a proceeding under this law shall also be made available to the parties to the proceedings and their attorneys.

B1. If a juvenile 14 years of age or older at the time of the offense is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, all court records regarding that adjudication and any subsequent adjudication of delinquency, other than those records specified in subsection A, shall be open to the public. However, if a hearing was closed, the judge may order that certain records or portions thereof remain confidential to the extent necessary to protect any juvenile victim or juvenile witness.

C. All other juvenile records, including the docket, petitions, motions and other papers filed with a case, transcripts of testimony, findings, verdicts, orders and decrees shall be open to inspection only by those persons and agencies designated in subsections A and B. However, a licensed bail bondsman shall be entitled to know the status of a bond he has posted or provided surety on for a juvenile under § 16.1-258. This shall not authorize a bail bondsman to have access to or inspect any other portion of his principal's juvenile court records.

D. Attested copies of papers filed in connection with an adjudication of guilty for an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, which shows the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney shall be furnished to an attorney for the Commonwealth upon certification by the prosecuting attorney that such papers are needed as evidence in a pending criminal or traffic proceeding and that such papers will be only used for such evidentiary purpose.

D1. Attested copies of papers filed in connection with an adjudication of guilt for a delinquent act that would be a felony if committed by an adult, which show the charge, finding, disposition, name of the attorney for the juvenile, or waiver of attorney by the juvenile, shall be furnished to an attorney for the

Commonwealth upon his certification that such papers are needed as evidence in a pending criminal prosecution for a violation of § 18.2-308.2 and that such papers will be only used for such evidentiary purpose.

E. Upon request, a copy of the court order of disposition in a delinquency case shall be provided to the Virginia Workers' Compensation Commission solely for purposes of determining whether to make an award to the victim of a crime, and such information shall not be disseminated or used by the Commission for any other purpose including but not limited to actions pursuant to § 19.2-368.15.

F. Staff of the court services unit or the attorney for the Commonwealth shall provide notice of the disposition in a case involving a juvenile who is committed to state care after being adjudicated for a criminal sexual assault as specified in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 to the victim or a parent of a minor victim, upon request. Additionally, if the victim or parent submits a written request, the Department of Juvenile Justice shall provide advance notice of such juvenile offender's anticipated date of release from commitment.

G. Any record in a juvenile case file which is open for inspection by the professional staff of the Department of Juvenile Justice pursuant to subsection A and is maintained in an electronic format by the court, may be transmitted electronically to the Department of Juvenile Justice. Any record so transmitted shall be subject to the provisions of § 16.1-300.

Code 1950, § 16.1-162; 1956, c. 555; 1958, c. 353; 1971, Ex. Sess., c. 228; 1975, c. 334; 1977, c. 559; 1979, c. 605; 1983, c. 389; 1984, c. 34; 1988, c. 541; 1989, c. 182; 1990, c. 258; 1992, c. 547; 1994, c. 603; 1995, c. 430; 1996, cc. 755, 870, 914; 1998, cc. 278, 521; 2002, cc. 701, 735, 741; 2003, c. 143; 2004, c. 446; 2007, c. 133; 2009, cc. 138, 308, 740; 2021, Sp. Sess. I, c. 463.

§ 16.1-305.01. Access to child and spousal support case files.

All child support and spousal support case files, whether physical or digital, shall be open for inspection only to the following:

1. The judge, court officials, and clerk or deputy clerk assigned to serve the court in which the case is pending or to which the case is transferred pursuant to court order;

2. Any party to the case;

3. Any attorney of record to the case; and

4. The Department of Social Services and the Division of Child Support Enforcement.

Any other person, agency, or institution having a legitimate interest in such case files or the work of the court, by order of the court, may inspect the case files.

2018, c. 18.

§ 16.1-305.1. Disclosure of disposition in certain delinquency cases.

Upon a court's disposition of a proceeding where a juvenile is charged with a crime listed in subsection G of § 16.1-260 in which a juvenile is adjudicated delinquent, convicted, found not guilty or the

charges are reduced, the clerk of the court in which the disposition is entered shall, within 15 days of the expiration of the appeal period, if there has been no notice of an appeal, provide written notice of the disposition ordered by the court, including the nature of the offense upon which the disposition was based, to the superintendent of the school division in which the child is enrolled at the time of the disposition or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. If the court defers disposition, or the charges are nolle prosequi, withdrawn, or dismissed the clerk shall, within 15 days of such action, provide written notice of such action to the superintendent of the school division in which the child is enrolled at such time or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense. If charges are withdrawn in intake or handled informally without a court disposition, the intake officer shall, within 15 days of such action, provide written notification of the action to the superintendent of the school division in which the child is enrolled at that time or, if he is not then enrolled in school, the division in which he was enrolled at the time of the offense.

If the child is not enrolled in the school division that receives notification under this section, the superintendent of that division may forward the notification to the superintendent of the school division where the child is enrolled.

A superintendent who receives notification under this section may disclose the information received to anyone to whom he or a principal disclosed that a petition had been filed. Further disclosure of information received under this section by the superintendent to school personnel is authorized only as provided in § 22.1-288.2.

1993, cc. 645, 889; 1994, cc. 835, 913; 1996, cc. 755, 914; 1997, c. 371; 1999, c. 952; 2003, c. 119.

§ 16.1-305.2. Disclosure of notice of the filing of a petition and certain reports by division superintendent.

Except as otherwise provided in this section, a division superintendent shall not disclose information contained in or derived from a (i) notice of petition received pursuant to § 16.1-260 or (ii) report received pursuant to § 66-25.2:1. If the juvenile is not enrolled as a student in a public school in the division to which the notice or report was given, the superintendent shall promptly so notify the intake officer of the juvenile court in which the petition was filed or the Director of the Department who sent the report and may forward the notice of petition or report to the superintendent of the division in which the juvenile is enrolled, if known.

If the division superintendent believes that disclosure of information regarding a petition to school personnel is necessary to ensure the physical safety of the juvenile, other students or school personnel within the division, he may at any time prior to receipt of the notice of disposition in accordance with § 16.1-305.1, disclose the fact of the filing of the petition and the nature of the offense to the principal of the school in which the juvenile who is the subject of the petition is enrolled. The principal may further disseminate the information regarding a petition, after the juvenile has been taken into custody, whether or not the child has been released, only to those students and school personnel having direct

contact with the juvenile and need of the information to ensure physical safety or the appropriate educational placement or other educational services.

If the division superintendent believes that disclosure of information regarding a report received pursuant to § 66-25.2:1 to school personnel is necessary to ensure the physical safety of the juvenile, other students, or school personnel within the division he may disclose the information to the principal of the school in which the juvenile is enrolled. The principal may further disseminate the information regarding such report only to school personnel as necessary to protect the juvenile, the subject or subjects of the danger, other students, or school personnel.

1995, c. 429; 2003, c. 119; 2009, c. 276.

§ 16.1-306. Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations district court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records, including electronic records, connected with any proceeding concerning a juvenile in such court, if such juvenile has attained the age of 19 years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section. However, if the juvenile was found guilty of an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of 29. If the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult, the records shall be retained.

B. However, in all files in which the court records concerning a juvenile contain a finding of guilty of any offense ancillary to (i) a delinquent act that would be a felony if committed by an adult or (ii) any offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records of any such ancillary offense shall also be retained for the time specified for the felony or the offense reported to the Department of Motor Vehicles as specified in subsection A, and all such records shall be available for inspection as provided in § 16.1-305.

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

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

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

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

Code 1950, § 16.1-193; 1956, c. 555; 1977, c. 559; 1979, cc. 736, 737; 1989, c. 183; 1990, c. 258; 1993, cc. 468, 589, 926; 1994, cc. 859, 949; 1996, c. 463; 2008, c. 519; 2014, c. 271.

§ 16.1-307. Circuit court records regarding juveniles.

In proceedings against a juvenile in the circuit court in which the circuit court deals with the child in the same manner as a case in the juvenile court, the clerk of the court shall preserve all records connected with the proceedings in files separate from other files and records of the court as provided in § 16.1-302. Except as provided in §§ 19.2-389.1 and 19.2-390, such records shall be open for inspection only in accordance with the provisions of § 16.1-305 and shall be subject to expungement provisions of § 16.1-306. In proceedings in which a juvenile, fourteen years of age or older at the time of the offense, was adjudicated delinquent in juvenile court on the basis of an act which would be a felony if committed by an adult, or was found guilty of a felony in the circuit court, any court records, other than those specified in subsection A of § 16.1-305, regarding that adjudication or conviction and any subsequent adjudication of delinquency or conviction of a crime, shall be available and shall be treated in the same manner as adult criminal records.

1977, c. 559; 1990, c. 258; 1993, cc. 468, 926; 1996, cc. 755, 914.

§ 16.1-308. Effect of adjudication on status of child.

Except as otherwise provided by law for a juvenile found guilty of a felony in circuit court whose case is disposed of in the same manner as an adult criminal case, a finding of guilty on a petition charging delinquency under the provisions of this law shall not operate to impose any of the civil disabilities ordinarily imposed by conviction for a crime, nor shall any such finding operate to disqualify the child for employment by any state or local governmental agency.

Nothing in this section shall prohibit the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof from denying employment to a person who had been adjudicated delinquent where such denial is based on the nature and gravity of the offense, the time since adjudication, the time since completion of any sentence, and the nature of the job sought.

Code 1950, § 16.1-179; 1956, c. 555; 1977, c. 559; 1996, cc. 755, 914; 2011, c. 622.

§ 16.1-309. Penalty.

A. Except as provided in §§ 16.1-299, 16.1-300, 16.1-301, 16.1-305 and 16.1-307, any person who (i) files a petition, (ii) receives a petition or has access to court records in an official capacity, (iii) participates in the investigation of allegations which form the basis of a petition, (iv) is interviewed concerning such allegations and whose information is derived solely from such interview or (v) is present during any court proceeding, who discloses or makes use of or knowingly permits the use of identifying information not otherwise available to the public concerning a juvenile who is suspected of being or is the subject of a proceeding within the jurisdiction of the juvenile court pursuant to subdivisions A

1 through 5 or subdivision A 7 of § 16.1-241 or who is in the custody of the State Department of Juvenile Justice, which information is directly or indirectly derived from the records or files of a law-enforcement agency, court or the Department of Juvenile Justice or acquired in the course of official duties, is guilty of a Class 3 misdemeanor.

B. The provisions of this section shall not apply to any law-enforcement officer or school employee who discloses to school personnel identifying information concerning a juvenile who is suspected of committing or has committed a delinquent act that has met applicable criteria of § 16.1-260 and is committed or alleged to have been committed on school property during a school-sponsored activity or on the way to or from such activity, if the disclosure is made solely for the purpose of enabling school personnel to take appropriate disciplinary action within the school setting against the juvenile. Further, the provisions of this section shall not apply to school personnel who disclose information obtained pursuant to §§ 16.1-305.1 and 22.1-288.2, if the disclosure is made in compliance with those sections.

1977, c. 559; 1978, c. 626; 1979, c. 481; 1989, cc. 520, 733; 1993, cc. 645, 889; 1994, cc. 835, 913; 1996, cc. 755, 914; 2003, c. 119; 2017, c. 623.

§ 16.1-309.1. Exception as to confidentiality.

A. Notwithstanding any other provision of this article, where consideration of public interest requires, the judge shall make available to the public the name and address of a juvenile and the nature of the offense for which a juvenile has been adjudicated delinquent (i) for an act which would be a Class 1, 2, or 3 felony, forcible rape, robbery or burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is sentenced as an adult in circuit court.

B. 1. a. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Juvenile Justice or a locally operated court services unit, may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize 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 which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a felony if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the Commonwealth's attorney, the Department of Juvenile Justice, or a locally operated court services unit may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

b. At any time prior to disposition, if a juvenile charged with a delinquent act which would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, petition the court having jurisdiction of the offense to authorize 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 which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public. If a juvenile charged with a delinquent act that would constitute a misdemeanor if committed by an adult, or held in custody by a law-enforcement officer, or held in a secure facility pursuant to such charge becomes a fugitive from justice at a time when the court is not in session, the attorney for the Commonwealth may, with notice to the juvenile's attorney of record, authorize the public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought, and any other information which may expedite his apprehension.

2. After final disposition, if a juvenile (i) found to have committed a delinquent act becomes a fugitive from justice or (ii) who has been committed to the Department of Juvenile Justice pursuant to subdivision A 14 of § 16.1-278.8 or § 16.1-285.1 becomes a fugitive from justice by escaping from a facility operated by or under contract with the Department or from the custody of any employee of such facility, the Department may release to the public 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 which may expedite his apprehension. The Department shall promptly notify the attorney for the Commonwealth of the jurisdiction in which the juvenile was tried whenever information is released pursuant to this subdivision. If a juvenile specified in clause (i) being held after disposition in a secure facility not operated by or under contract with the Department becomes a fugitive by such escape, the attorney for the Commonwealth of the locality in which the facility is located may release the information as provided in this subdivision.

C. Whenever a juvenile 14 years of age or older is charged with a delinquent act that would be a criminal violation of Article 2 (§ 18.2-38 et seq.) of Chapter 4 of Title 18.2, a felony involving a weapon, a felony violation of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an "act of violence" as defined in subsection A of § 19.2-297.1 if committed by an adult, the judge may, where consideration of the public interest requires, make the juvenile's name and address available to the public.

D. Upon the request of a victim of a delinquent act that would be a felony or that would be a misdemeanor violation of § 16.1-253.2, 18.2-57, 18.2-57.2, 18.2-60.3, 18.2-60.4, 18.2-67.4, or 18.2-67.5 if committed by an adult, the court may order that such victim be informed of the charge or charges brought, the findings of the court, and the disposition of the case. For purposes of this section, "victim" shall be defined as in § 19.2-11.01.

E. Upon request, the judge or clerk may disclose if an order of emancipation 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.

F. Notwithstanding any other provision of law, a copy of any court order that imposes a curfew or other restriction on a juvenile may be provided to the chief law-enforcement officer of the county or city wherein the juvenile resides. The chief law-enforcement officer shall only disclose information contained in the court order to other law-enforcement officers in the conduct of official duties.

G. Notwithstanding any other provision of law, where consideration of public safety requires, the Department and locally operated court service unit shall release information relating to a juvenile's criminal street gang involvement, if any, and the criminal street gang-related activity and membership of others, as criminal street gang is defined in § 18.2-46.1, obtained from an investigation or supervision of a juvenile and shall include the identity or identifying information of the juvenile; however, the Department and local court service unit shall not release the identifying information of a juvenile not affiliated with or involved in a criminal street gang unless that information relates to a specific criminal act. Such information shall be released to any State Police, local police department, sheriff's office, or law-enforcement task force that is a part of or administered by the Commonwealth or any political subdivision thereof, and that is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth. The exchange of information shall be for the purpose of an investigation into criminal street gang activity.

H. Notwithstanding any other provision of Article 12 (§ 16.1-299 et seq.), a clerk of the court shall report to the Bureau of Immigration and Customs Enforcement of the U.S. Department of Homeland Security a juvenile who has been detained in a secure facility but only upon an adjudication of delinquency or finding of guilt for a violent juvenile felony and when there is evidence that the juvenile is in the United States illegally.

I. Notwithstanding any other provision of this article, whenever an intake officer proceeds informally against a juvenile, the Department or local court service unit may disclose only such information as necessary to enforce any provision of the diversion program to any law-enforcement officer, school principal where such juvenile attends school, or known victim. Such information shall remain confidential and not be part of such juvenile's academic record. Additionally, a local court service unit may provide information regarding the availability and ordering of a protective order and restitution and dispositional information to the victim in the case.

1979, c. 94; 1981, c. 307; 1986, c. 506; 1988, c. 749; 1993, c. 297; 1994, cc. 499, 542; 1995, cc. 558, 687, 804; 1997, cc. 434, 452; 1999, c. 710; 2000, cc. 563, 603; 2005, c. 364; 2006, cc. 259, 309, 682; 2008, c. 798; 2010, cc. 367, 472, 526; 2014, c. 230; 2020, cc. 995, 996; 2023, c. 677.

Article 12.1 - Virginia Juvenile Community Crime Control Act

§ 16.1-309.2. Purpose and intent.

The General Assembly, to ensure the prevention of juvenile crime and the imposition of appropriate and just sanctions and to make the most efficient use of community diversion and community-based and correctional resources for those juveniles who have been screened for needing community diversion or community-based services using an evidence-based assessment protocol or are before intake on complaints or the court on petitions alleging that the juvenile is a child in need of services, child in need of supervision, or delinquent, has determined that it is in the best interest of the Commonwealth to establish a community-based system of progressive intensive sanctions and services that correspond to the severity of offense and treatment needs. The purpose of this system shall be to deter crime by providing community diversion or community-based services to juveniles who are in need of such services and by providing an immediate, effective punishment that emphasizes accountability of the juvenile offender for his actions as well as reduces the pattern of repeat offending. In furtherance of this purpose, counties, cities or combinations thereof are encouraged to develop, implement, operate, and evaluate programs and services responsive to their specific juvenile offender needs and juvenile crime trends.

This article shall be interpreted and construed to accomplish the following purposes:

1. Promote an adequate level of services to be available to every juvenile and domestic relations district court.

2. Ensure local autonomy and flexibility in addressing juvenile crime.

3. Encourage a public and private partnership in the design and delivery of services for juveniles who come before intake on a complaint or the court on a petition alleging a child is in need of services, in need of supervision, or delinquent or have been screened for needing community diversion or community-based services using an evidence-based assessment protocol.

4. Emphasize parental responsibility and provide community-based services for juveniles and their families which hold them accountable for their behavior.

5. Establish a locally driven statewide planning process for the allocation of state resources.

6. Promote the development of an adequate service capacity for juveniles before intake on a complaint or the court on petitions alleging status or delinquent offenses.

1995, cc. 698, 840; 1996, cc. 671, 682; 2019, c. 105.

§ 16.1-309.3. Establishment of a community-based system of services; biennial local plan; quarterly report.

A. Any county, city, or combination thereof may establish a community-based system pursuant to this article, which shall provide, or arrange to have accessible, a variety of predispositional and postdispositional services. These services may include, but are not limited to, diversion, community service, restitution, house arrest, intensive juvenile supervision, substance abuse assessment and testing, first-time offender programs, intensive individual and family treatment, structured day treatment and structured residential programs, aftercare/parole community supervision, and residential and

nonresidential services for juveniles who have been screened for needing community diversion or community-based services using an evidence-based assessment protocol or juvenile offenders who are before intake on complaints or the court on petitions alleging that the juvenile is delinquent, in need of services, or in need of supervision but shall not include secure detention for the purposes of this article. Such community-based systems shall be based on an annual review of court-related data and an objective assessment of the need for services and programs for juveniles who have been screened for needing community diversion or community-based services using an evidence-based assessment protocol or juvenile offenders who are before intake on complaints or the court on petitions alleging that the juvenile is a child in need of services, in need of supervision, or delinquent. The community-based system shall be developed after consultation with the judge or judges of the juvenile and domestic relations district court, the director of the court services unit, the community policy and management team established under § 2.2-5205, and, if applicable, the director of any program established pursuant to § 66-26.

B. Community-based services instituted pursuant to this article shall be administered by a county, city, or combination thereof and may be administered through a community policy and management team established under § 2.2-5204 or a commission established under § 16.1-315. Such programs and services may be provided by qualified public or private agencies, pursuant to appropriate contracts. Any commission established under § 16.1-315 providing predispositional and postdispositional services prior to the enactment of this article which serves the City of Chesapeake or the City of Hampton shall directly receive the proportion of funds calculated under § 16.1-309.7 on behalf of the owner localities. The funds received shall be allocated directly to the member localities. Any member locality which elects to withdraw from the commission shall be entitled to its full allocation as provided in §§ 16.1-309.6 and 16.1-309.7. The Department of Juvenile Justice shall provide technical assistance to localities, upon request, for establishing or expanding programs or services pursuant to this article.

C. Funds provided to implement the provisions of this article shall not be used to supplant funds established as the state pool of funds under § 2.2-5211.

D. Any county, city, or combination thereof which establishes a community-based system pursuant to this article shall biennially submit to the State Board for approval a local plan for the development, implementation, and operation of such services, programs, and facilities pursuant to this article. The plan shall provide (i) the projected number of juveniles served by alternatives to secure detention and (ii) any reduction in secure detention rates and commitments to state care as a result of programs funded pursuant to this article. The State Board shall solicit written comments on the plan from the judge or judges of the juvenile and domestic relations court, the director of the court services unit, and, if applicable, the director of programs established pursuant to § 66-26. Prior to the initiation of any new services, the plan shall also include a cost comparison for the private operation of such services.

E. Each locality shall report quarterly to the Director the data required by the Department to measure progress on stated objectives and to evaluate programs and services within such locality's plan.

1995, cc. 698, 840; 1996, cc. 671, 682; 1997, c. 347; 2000, cc. 195, 806; 2007, c. 813; 2019, c. 105.

§ 16.1-309.4. Statewide plan for juvenile services.

It shall be the duty of the Department of Juvenile Justice to devise, develop and promulgate a statewide plan for the establishment and maintenance of a range of institutional and community-based, diversion, predispositional and postdispositional services to be reasonably accessible to each court. The Department shall be responsible for the collection and dissemination of the required court data necessary for the development of the plan. The plan shall utilize the information provided by local plans submitted under § 16.1-309.3. The plan shall be submitted to the Board on or before July 1 in odd-numbered years. The plan shall include a biennial forecast with appropriate annual updates as may be required of future juvenile correctional center and detention home needs.

1995, cc. 698, 840; 1996, cc. 671, 682, 755, 914.

§ 16.1-309.5. Construction, etc., of detention homes and other facilities; reimbursement in part by Commonwealth.

A. The Commonwealth shall reimburse any county, city or any combination thereof for one-half the cost of construction, enlargement, renovation, purchase or rental of a detention home or other facilities the plans and specifications of which were approved by the Board and the Governor in accordance with the provisions of subsection C of this section.

B. The construction, renovation, purchase, rental, maintenance and operation of a detention home or other facilities established by a county, city or any combination thereof and the necessary expenses incurred in operating such facilities shall be the responsibility of the county, city or any combination thereof.

C. The Board shall promulgate regulations to include criteria to serve as guidelines in evaluating requests for such reimbursements and to ensure the geographically equitable distribution of state funds provided for such purpose. Priority funding shall be given to multijurisdictional initiatives. No such reimbursement for costs of construction shall be made, however, unless the plans and specifications, including the need for additional personnel therefor, have been submitted to the Governor and the construction has been approved by him. Such reimbursement shall be paid by the State Treasurer out of funds appropriated to the Department. In the event that a county or city requests and receives financial assistance from other public fund sources outside the provisions of this law, the total financial assistance and reimbursement shall not exceed the total construction cost of the project exclusive of land and site improvement costs, and such funds shall not be considered state funds.

1995, cc. 698, 840; 2000, cc. 562, 601.

§ 16.1-309.6. How state appropriations for operating costs of Juvenile Community Crime Control Act programs determined; notice of financial aid.

The Governor's proposed biennial budget shall include, for each fiscal year, an appropriation for operating costs for Juvenile Community Crime Control Act programs. The proposed appropriation shall include amounts for compensating counties, cities and combinations thereof which elect to establish a system of community-based services pursuant to this article. Upon approval pursuant to the provisions

of this article, any county, city or combination thereof which utilized predispositional or postdispositional block grant services or programs in fiscal year 1995 shall contribute an amount not less than the sum of its fiscal year 1995 expenditures for child care day placements in predispositional and postdispositional block grant alternatives to secure detention for implementation of its local plan. Such amount shall not include any expenditures in fiscal year 1995 for secure detention and placements made pursuant to § 2.2-5211.

The Department shall review annually the costs of operating services, programs and facilities pursuant to this article and recommend adjustments to maintain the Commonwealth's proportionate share. The Department shall no later than the fifteenth day following adjournment sine die of the General Assembly provide each county and city an estimate of funds appropriated pursuant to this article.

1995, cc. 698, 840; 1996, cc. 671, 682; 1998, c. 54.

§ 16.1-309.7. Determination of payment.

A. The Commonwealth shall provide financial assistance to localities whose plans have been approved pursuant to subsection D of § 16.1-309.3 in quarterly payments based on the annual calculated costs which shall be determined as follows:

1. For community diversion services, one-half of the calculated costs as determined by the following factors: (i) the statewide daily average costs for predispositional nonresidential services and (ii) the total number of children in need of services and children in need of supervision complaints diverted at intake by the locality in the previous year and the total number of children who have been screened for needing community diversion or community-based services using an evidence-based assessment protocol.

2. For predispositional community-based services, three-quarters of the calculated costs as determined by the following factors: (i) the statewide daily average cost evenly divided for predispositional community-based residential and nonresidential services and (ii) the number of arrests of juveniles based on the locality's most recent year available Uniform Crime Reports for (a) one-third of all Part 1 crimes against property, (b) one-third of all drug offenses and (c) all remaining Part 2 arrests.

3. For postdispositional community-based services for adjudicated juveniles, one-half of the calculated costs as determined by the following factors: (i) the statewide average daily costs for postdispositional community-based nonresidential services and (ii) the locality's total number of juveniles, who, in the previous year, were adjudicated delinquent for the first time.

4. For postdispositional community-based services for juveniles adjudicated delinquent for a second or subsequent offense, one-half of the calculated costs as determined by the following factors: (i) the statewide average daily costs evenly divided for postdispositional community-based residential and nonresidential services and (ii) the locality's total number of court dispositions which, in the previous year, adjudicated juveniles as (a) delinquent for a second or subsequent offense, (b) children in need of services, or (c) children in need of supervision, less those juveniles receiving services under the provisions of §§ 16.1-285.1 and 16.1-286.

B. Any moneys distributed by the Commonwealth under this article which are unexpended at the end of each fiscal year within a biennium shall be retained by the county, city or combination thereof and subsequently expended for operating expenses of Juvenile Community Crime Control Act programs. Any surplus funds remaining at the end of a biennium shall be returned to the state treasury.

1995, cc. 698, 840; 1996, cc. 820, 970; 2019, c. 105.

§ 16.1-309.8. Costs of maintenance of juveniles in Community Crime Control Act programs.

Any county, city or combination thereof operating a Juvenile Community Crime Control Act program may collect from any locality of this Commonwealth from which a juvenile is placed in its program a daily rate calculated to allow the operating locality or localities to meet but not exceed the costs of providing services. Additionally, this rate may not be higher than the rate charged other counties, cities or combinations thereof using the same program.

1995, cc. 698, 840; 1996, cc. 671, 682; 1998, c. 538.

§ 16.1-309.9. Establishment of standards; determination of compliance.

A. The State Board of Juvenile Justice shall develop, promulgate and approve standards for the development, implementation, operation and evaluation of the range of community-based programs, services and facilities authorized by this article. The State Board shall also approve minimum standards for the construction and equipment of detention homes or other facilities and for food, clothing, medical attention, and supervision of juveniles to be housed in these facilities and programs.

B. The State Board may prohibit, by its order, the placement of juveniles in any place of residence which does not comply with the minimum standards. It may limit the number of juveniles to be detained or housed in a detention home or other facility and may designate some other place of detention or housing for juveniles who would otherwise be held therein.

C. The Department shall periodically review all services established and annually review expenditures made under this article to determine compliance with the approved local plans and operating standards. If the Department determines that a program is not in substantial compliance with the approved plan or standards, the Department may suspend all or any portion of financial aid made available to the locality until there is compliance.

D. Orders of the State Board of Juvenile Justice shall be enforced by circuit courts as is provided for the enforcement of orders of the State Board of Local and Regional Jails under § 53.1-70.

1995, cc. 698, 840; 2020, c. 759.

§ 16.1-309.10. Visitation and management of detention homes; other facilities; reports of superintendent.

In the event that a detention home, group home or other residential care facility for children in need of services or delinquent or alleged delinquent youth is established by a county, city, or any combination thereof, it shall be subject to visitation, inspection and regulation by the State Board or its agents, and shall be furnished and operated so far as possible as a family home under the management of a

superintendent. It shall be the duty of the superintendent to furnish the Department such reports and other statistical data relating to the operation of such detention homes, group homes or other residential care facilities for children in need of services or delinquent or alleged delinquent youth as may be required by the Director.

1995, cc. 698, 840.

§ 16.1-309.11. Youth justice diversion program.

A. For the purposes of this section, "youth justice diversion program" means a diversionary program that (i) is monitored by a local youth justice diversion program advisory committee; (ii) uses juvenile volunteers as lawyers, jurors, and other court personnel; (iii) uses volunteer attorneys as judges; (iv) conducts peer trials of juveniles who are referred to the program by the intake officer; and (v) imposes various sentences emphasizing restitution, rehabilitation, accountability, competency building, and education, but not incarceration.

B. Any jurisdiction may establish a youth justice diversion program upon establishment of a local youth justice diversion program advisory committee and approval of the youth justice diversion program by the chief judge of the juvenile and domestic relations district court that serves such jurisdiction. Each local youth justice diversion program advisory committee shall ensure quality, efficiency, and fairness in the planning, implementation, and operation of the youth justice diversion program that serves the jurisdiction. Advisory committee membership may include, but shall not be limited to, the following persons or their designees: (i) a judge from the juvenile and domestic relations district court that serves such jurisdiction; (ii) the attorney for the Commonwealth; (iii) the public defender or a member of the local criminal defense bar in jurisdictions in which there is no public defender; (iv) the clerk of the court in which the youth justice diversion program is located; (v) a representative of the Department of Juvenile Justice from the local office that serves the jurisdiction; (vi) a local law-enforcement officer; (vii) a representative of a local school in such jurisdiction; (viii) a representative of juvenile court services; (ix) a representative of a juvenile detention center or group home; (x) a representative of a local children and family services agency; and (xi) any other persons selected by the local youth justice diversion program advisory committee.

C. Each local youth justice diversion program advisory committee shall establish criteria for the eligibility and participation of juveniles alleged to have committed a delinquent act other than an act that would be a felony or a Class 1 misdemeanor if committed by an adult in the youth justice diversion program, with the consent of the juvenile's parent or legal guardian.

D. Each local youth justice diversion program advisory committee shall establish policies and procedures for the operation of the youth justice diversion program to attain the following goals: (i) early intervention in and prevention of delinquent behavior; (ii) providing positive alternative sanctions for offenders by providing a peer-driven sentencing mechanism that allows young people to take responsibility, to be held accountable, and to make restitution; (iii) advocating for fair, constructive, and restorative sentences predicated on sensitivity to the unique needs and the diversity of the participating

juveniles; and (iv) developing positive citizenship attitudes, encouraging civic engagement, and promoting educational success through a diversity of service learning opportunities, strategies, and activities.

E. All records and reports concerning juvenile participants in a local youth justice diversion program made available to members of a local youth justice diversion program advisory committee and volunteers of a local youth justice diversion program and all records and reports identifying a juvenile participant that are generated by the committee or program from such reports shall be confidential and shall not be disclosed, except as authorized by other applicable law.

F. A juvenile referred to a youth justice diversion program may be required to contribute to the cost of the program pursuant to guidelines developed by the local youth justice diversion program advisory committee.

2021, Sp. Sess. I, c. 457.

Article 13 - FACILITIES FOR DETENTION AND OTHER RESIDENTIAL CARE

§§ 16.1-310 through 16.1-314. Repealed.

Repealed by Acts 1995, cc. 698 and 840.

§ 16.1-315. Joint or regional citizen detention commissions authorized.

The governing bodies of three or more counties, cities or towns (hereinafter referred to as "political subdivisions") may, by concurrent ordinances or resolutions, provide for the establishment of a joint or regional citizen juvenile detention home, group home or other residential care facility commission. Such commission shall be a public body corporate, with such powers as are set forth in this article.

Code 1950, § 16.1-202.2; 1974, c. 645; 1977, c. 559.

§ 16.1-316. Number and terms of members; admission of additional local governing bodies.

A juvenile detention home, group home or other residential care facility commission shall consist of not less than three members and shall be comprised of at least one member from each participating political subdivision. In addition, the participating political subdivisions may provide for the appointment of an alternate for each principal member of such a commission. The alternate members may attend and participate in all meetings of the commission and may vote in the absence of their respective principals. Such members and alternates, if any, shall be appointed, after consultation with the chief judge of the juvenile and domestic relations district court, by the governing body. Neither the chief judge nor any judge of the juvenile and domestic relations district court from his district shall be a member of the commission.

The term of office of all members and alternates, if any, shall be for four years. When additional local governing bodies desire to join the commission, they may do so upon the recommendation of the commission and with the approval of the sponsoring local governing bodies. The number of members which the applicant local governments will be entitled to appoint to such commission and other conditions relating to the expansion of sponsoring membership shall be determined by the agreement

entered into between or among the sponsoring local governments and such applicant local governments.

Code 1950, § 16.1-202.3; 1966, c. 509; 1972, cc. 365, 430; 1974, c. 645; 1976, c. 448; 1977, c. 559; 1978, cc. 37, 717; 1984, c. 77; 1988, c. 885; 1992, c. 441; 1998, c. 488.

§ 16.1-317. Quorum; chairman; rules of procedure; compensation.

The appointive members of the commission shall constitute the commission, and the powers of the commission shall be vested in and exercised by the members in office from time to time. Neither the chief judge nor any judge of the juvenile and domestic relations district court shall be a member of the commission.

A majority of the members in office shall constitute a quorum. The commission shall elect a chairman, and shall adopt rules and regulations for its own procedure and government. The governing bodies of the participating political subdivisions may by ordinance or resolution provide for the payment of compensation to the members of the commission and for the reimbursement of their actual expenses incurred in the performance of their duties.

Code 1950, § 16.1-202.4; 1966, c. 509; 1977, c. 559; 1978, cc. 37, 717; 1988, c. 885; 1992, c. 441.

§ 16.1-318. Powers of commission generally; supervision by Director of Department of Juvenile Justice.

Each commission created hereunder shall have all powers necessary or convenient for carrying out the general purposes of this article, including the following powers in addition to others herein granted, and subject to such supervision by the Director of the Department of Juvenile Justice as is provided in §§ 16.1-309.4, 16.1-309.9, and 16.1-309.10 of this law:

A. In general. -- To adopt a seal and alter the same at pleasure; to have perpetual succession; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

B. Officers, agents and employees. -- To employ such technical experts, and such other officers, agents and employees as it may require, to fix their qualifications, duties and compensation and to remove such employees at pleasure.

C. Acquisition of property. -- To acquire within the territorial limits of the political subdivisions for which it is formed, by purchase, lease, gift, or exercise of the right of eminent domain, subject to conditions hereinafter set forth, whatever lands, buildings and structures may be reasonably necessary for the purpose of establishing, constructing, enlarging, maintaining and operating one or more juvenile detention homes or facilities for the reception of juveniles committed thereto under the provisions of this chapter; however, such lands, buildings and structures may be acquired by purchase, lease or gift, although not within the territorial limits, if the location thereof is feasible and practicable with relation to the several political subdivisions for which such commission is formed. Such location shall be approved by resolution of the governing bodies of the participating political subdivisions and of the

governing body of the political subdivision in which such lands, buildings and structures are to be located, and the consent in writing of the Director of the Department is given thereto.

D. Construction. -- To acquire, establish, construct, enlarge, improve, maintain, equip and operate any juvenile detention home or facility.

E. Rules and regulations for management. -- To make and enforce rules and regulations for the management and conduct of its business and affairs and for the use, maintenance and operation of its facilities and properties.

F. Acceptance of donations. -- To accept gifts and grants from the Commonwealth or any political subdivision thereof, and from the United States and any of its agencies; and to accept donations of money, personal property or real estate, and take title thereto from any person, firm, corporation or association.

G. Regulations as to juveniles under care. -- To make regulations and policies governing the care, guidance and training of juveniles in such detention facilities.

H. Borrowing. -- To borrow money for any of its corporate purposes and to execute evidences of such indebtedness and to secure the same and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of the same and for the rights of the holders thereof. Any city or county participating in the commission may lend, advance or give money or materials or property of any kind to the commission.

I. Issuance of revenue bonds. -- To issue revenue bonds in accordance with, and subject to the terms and conditions of § 53.1-95.10, in the same manner in which jail authorities are authorized to issue such bonds.

Bonds issued under the provisions of this section shall not be deemed to constitute a pledge of the faith and credit of the Commonwealth or of any political subdivision thereof. All such bonds shall contain a statement on their face substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any county, city, town, or other subdivision of the Commonwealth is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under the provisions of this section shall not directly, indirectly or contingently obligate the Commonwealth or any county, city, town, or other subdivision of the Commonwealth to levy any taxes whatever therefor or to make any appropriation for their payment except from the funds pledged under the provisions of this section. Any reimbursement payments made pursuant to § 16.1-309.5 for juvenile detention homes or facilities for which bonds are issued pursuant to this section shall not (i) exceed the maximum reimbursement limits established by the Board of Juvenile Justice or (ii) include any sums for the payment of interest costs incurred by the Commission in connection with the issuance of such bonds.

Code 1950, § 16.1-202.5; 1964, Ex. Sess., c. 21; 1974, cc. 44, 45; 1977, c. 559; 1989, c. 733; 1993, c. 833; 1995, cc. 696, 699; 1997, c. 752.

§ 16.1-319. Acquisition of property by commission.

The commission shall have the right to acquire by eminent domain any real property, including fixtures and improvements, which it may deem necessary to carry out the purposes of this article, after the adoption by it of a resolution declaring that the acquisition of the property described therein is in the public interest and necessary for public use; provided, however, that no such real property shall be so acquired or such facility established within the territorial limits of such political subdivision without the approval, after public hearing, of the governing body of such political subdivision.

Subject to the provisions of § 25.1-102, property already devoted to a public use may be acquired, provided, that no property belonging to any county or city, religious corporation, unincorporated church or charitable corporation may be acquired without its consent.

Code 1950, § 16.1-202.6; 1977, c. 559; 2003, c. 940; 2006, c. 673.

§ 16.1-320. Property of commission exempt from execution and judgment liens.

All property of the commission shall be exempt from levy and sale by virtue of an execution. No judgment against the commission shall be a charge or lien upon its property, real or personal.

Code 1950, § 16.1-202.7; 1977, c. 559.

§ 16.1-321. Appropriations by political subdivisions; issuance of bonds.

The political subdivisions for which the commission is created are authorized to make appropriations to the commission from available funds for the construction, improvement, maintenance and operation of any juvenile detention facility operated or proposed to be operated by the commission; and subject to other applicable provisions of law may issue general obligation bonds and appropriate the proceeds thereof for capital costs of such facility.

Code 1950, § 16.1-202.8; 1977, c. 559.

§ 16.1-322. Record of commission; reports.

The commission shall keep and preserve complete records of its administrative operations and transactions, which records shall be open to inspection by the participating political subdivisions at all times. It shall make reports to such subdivisions annually, and at such other times as they may require.

Code 1950, § 16.1-202.9; 1977, c. 559.

Article 13.1 - FUNDING OF LOCAL JUVENILE FACILITIES, PROGRAMS AND CERTAIN COURT SERVICE UNITS

§ 16.1-322.1. Apportionment of funds to localities or commissions operating juvenile secure detention facilities or programs; standards for apportionment.

The Department shall apportion among the localities or commissions operating a juvenile secure detention facility the moneys appropriated to the Department in the general appropriation act for the support of such facilities, excluding amounts approved for the state share of construction and rental of

facilities, state ward per diem allowances, and payments for the United States Department of Agriculture lunch program. Such apportionment shall be made as follows:

The allocation shall be apportioned to provide each locality or commission operating a juvenile secure detention facility an allowance for salaries and expenses. Such allowance shall be at least equal to the amount of the allowance provided to each locality or commission for such salaries and expenses in the immediately preceding fiscal year for similar services. The Department may adjust such allowance, where applicable, for new programs and facilities or for discontinued programs and services.

The Department may reduce the apportionments made in accordance with this section from time to time if any facility fails to comply with Department policy or standards approved by the Board. In effecting such a reduction of funds, the Department shall not be required to comply with the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2. Each locality or commission eligible to receive state funds apportioned under this section shall maintain operational and financial records which shall be open for evaluation by the Department and audit by the Auditor of Public Accounts.

The Governor may withhold approval for state expenditures, by reimbursement or otherwise, for the purposes set out in this section as provided in the current general appropriations act.

1982, c. 636; 1983, c. 358; 1986, c. 394; 1995, cc. 698, 840.

§ 16.1-322.2. Payment of funds quarterly; distribution and reallocation of reserve.

State moneys appropriated to the Department for the support of local juvenile secure detention facilities and apportioned in accordance with § 16.1-322.1 shall be paid to localities or commissions quarterly. If a local juvenile secure detention facility fails to comply with Department policy or standards adopted by the State Board, the next quarterly payment may be reduced and the difference paid into the general fund of the state treasury. In effecting such a reduction of funds, the Department shall not be required to comply with the provisions of Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2.

Any moneys distributed by the Commonwealth under this section which are unexpended at the end of each fiscal year within a biennium shall be retained by the locality or commission and subsequently expended for operating expenses of juvenile secure detention facilities. Any surplus funds remaining at the end of the biennium shall be returned to the state treasury.

The Governor may withhold approval for state expenditures, by reimbursement or otherwise, for the purpose set out in this section as provided in the current general appropriations act.

1982, c. 636; 1983, c. 358; 1986, c. 394; 1995, cc. 698, 840.

§ 16.1-322.3. Localities and commissions to make monthly reports to Director; penalty for willfully falsifying information; procedure when locality or commission fails to make report.

Each locality or commission eligible to receive state funds in accordance with the terms of this article shall report each month to the Director on blank forms furnished by the Department the number of child care days registered during the preceding month by each juvenile correctional program or facility

operated by such locality or commission. Such report shall be signed by both the chief administrative officer of the facility or program and fiscal officer of the locality or commission who shall certify the accuracy of the report. Either signer found guilty of willfully falsifying the information contained in such report shall be guilty of a Class 1 misdemeanor.

If any locality or commission fails to send such report within five days after the date when the report should be forwarded, the Director shall notify the chief administrative officer of such locality or commission of such failure. If the locality or commission fails to make the report within ten days from the date of such notice, then the Director shall cause the report to be prepared from the books of the locality or commission and shall certify the cost thereof to the Comptroller. The Comptroller shall issue his warrant on the Treasurer for that amount, deducting the same from any that may be due the locality or commission pursuant to § 16.1-322.2 by the Commonwealth.

1983, c. 358.

§ 16.1-322.4. Payments for children from other counties or cities.

Any locality or commission operating a juvenile secure detention facility may collect from any locality of this Commonwealth from which a child is placed in its facility a daily rate which does not exceed the sum total of the daily operating costs less any state aid for the purposes of construction and operation of such program. Daily cost shall be based on the cost of capital construction debt service and the cost of feeding, clothing, caring for, and furnishing medicine and medical attention for such child as may be agreed upon by the governmental units involved.

1983, c. 358; 1995, cc. 698, 840; 1998, c. 856.

Article 13.2 - PRIVATE OPERATION OF JUVENILE DETENTION FACILITIES

§ 16.1-322.5. State Board may authorize private construction, operation, etc., of local or regional detention homes, etc.

A. The State Board of Juvenile Justice may authorize a county or city or any combination of counties, cities, or towns established pursuant to § 16.1-315 to contract with a private entity for the financing, site selection, acquisition, construction, maintenance, leasing, management or operation of a local or regional detention home or other secure facility, or any combination of those services. Any project authorized pursuant to this article shall be consistent with the statewide plan developed pursuant to § 16.1-309.4.

B. Any project the State Board authorizes pursuant to subsection A of this section shall be subject to the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this article shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no such contract may be entered into unless the private contractor demonstrates that it has:

a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from detention home or other secure facility management projects;

c. Evidence of past performance of similar contracts; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and standards for a detention home or other secure facility.

2. Contracts awarded under the provisions of this article, including contracts for the provision of juvenile correctional facilities or programs or for the lease or use of public lands or buildings for use in the operation of facilities, may be entered into for a period of up to thirty years, subject to the requirements for expenditure of funds by the local governing body or bodies.

3. No contract for juvenile correctional facilities or programs shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation if fewer than five years, and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the county or city or combination of counties, cities, or towns established pursuant to § 16.1-315 and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a contractor or the county or city or combination of counties, cities, or towns established pursuant to § 16.1-315 of the benefits of any law limiting exposure to liability or setting a limit on damages.

4. No contract for correctional services shall be executed unless:

a. The proposed contract has been reviewed and approved by the State Board;

b. An appropriation for the services to be provided under the contract has been expressly approved as is otherwise provided by law;

c. The juvenile correctional facilities or programs proposed by the contract are of at least the same quality as those routinely provided by a governmental agency to similarly situated children; and

d. An evaluation of the proposed contract demonstrates a cost benefit to the county or city or combination of counties, cities, or towns established pursuant to § 16.1-315 when compared to alternative means of providing the services through governmental agencies.

1991, c. 258; 1992, c. 652; 1995, cc. 696, 699.

§ 16.1-322.6. Powers and duties not delegable to contractor.

No contract for juvenile correctional facilities or programs shall authorize, allow, or imply a delegation of authority or responsibility to a juvenile correctional facilities or programs contractor for any of the following:

1. Developing and implementing procedures for calculating a detainee's release date;

2. Classifying detainees or placing detainees in less restrictive custody or more restrictive custody;

3. Transferring a detainee; however, the contractor may make written recommendations regarding the transfer of a detainee or detainees;

4. Formulating rules of detainee behavior, violations of which may subject detainees to sanctions; however, the contractor may propose such rules for review and adoption, rejection, or modification as otherwise provided by law or regulation; and

5. Disciplining detainees in any manner which requires a discretionary application of rules of detainee behavior or a discretionary imposition of a sanction for violations of such rules.

1991, c. 258; 1992, c. 652.

§ 16.1-322.7. State Board to promulgate regulations.

The State Board shall make, adopt, and promulgate regulations governing the following aspects of private management and operation of local or regional detention homes or other secure facilities:

1. The schedule for state reimbursement to the cities or counties or any combination thereof, as the case may be, for costs of construction;

2. The manner of state payment to the localities for the care and custody costs at the facility of children for whom the Commonwealth is required to provide funds. However, in no event shall the payment to the localities, when calculated on a per diem per child basis, exceed the total cost ordinarily paid by the Commonwealth to the locality for the care and custody expenses of such children, when calculated on a per diem per child basis;

3. Minimum standards for the construction, equipment, administration, and operation of the facilities; however, the standards must be at least as stringent as those established for other local or regional detention homes or other secure facilities;

4. Contingency plans for operation of a contractor-operated facility in the event of a termination of the contract;

5. The powers and duties of contractors' personnel charged with the care and custody of detainees, including use of force and discipline;

6. Methods of monitoring a contractor-operated facility by an appropriate state or local governmental entity or entities;

7. Public access to a contractor-operated facility; and

8. Such other regulations as may be necessary to carry out the provisions of this article.

1991, c. 258; 1992, c. 652.

Article 14 - INTERSTATE COMPACT RELATING TO JUVENILES

§ 16.1-323. Governor to execute; form of compact.

The Governor of Virginia is hereby authorized and requested to execute, on behalf of the Commonwealth of Virginia, with any other state or states legally joining therein, a compact which shall be in form substantially as follows:

Article I. Purpose.

The compacting states to this Interstate Compact recognize that each state is responsible for the proper supervision or return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped or run away from supervision and control and in so doing have endangered their own safety and the safety of others. The compacting states also recognize that each state is responsible for the safe return of juveniles who have run away from home and in doing so have left their state of residence. The compacting states also recognize that Congress by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime.

It is the purpose of this compact, through means of joint and cooperative action among the compacting states, to (i) ensure that the adjudicated juveniles and status offenders subject to this compact are provided adequate supervision and services in the receiving state as ordered by the adjudicating judge or parole authority in the sending state; (ii) ensure that the public safety interests of the citizens, including the victims of juvenile offenders, in both the sending and receiving states are adequately protected; (iii) return juveniles who have run away, absconded or escaped from supervision or control or have been accused of an offense to the state requesting their return; (iv) make contracts for the cooperative institutionalization in public facilities in member states for delinquent youth needing special services; (v) provide for the effective tracking and supervision of juveniles; (vi) equitably allocate the costs, benefits and obligations of the compacting states; (vii) establish procedures to manage the movement between states of juvenile offenders released to the community under the jurisdiction of courts, juvenile departments, or any other criminal or juvenile justice agency that has jurisdiction over juvenile offenders; (viii) ensure immediate notice to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; (ix) establish procedures to resolve pending charges (detainers) against juvenile offenders prior to transfer or release to the community under the terms of this compact; (x) establish a system of uniform data collection on information pertaining to juveniles subject to this compact that allows access by authorized juvenile justice and criminal justice officials, and regular reporting of compact activities to heads of state executive, judicial, and legislative branches and juvenile and criminal justice administrators; (xi) monitor compliance with rules governing interstate movement of juveniles and initiate interventions to address and correct noncompliance; (xii) coordinate training and education regarding the regulation of interstate movement of juveniles for officials involved in such activity; and (xiii) coordinate the implementation and operation

of the compact with the Interstate Compact on the Placement of Children, the Interstate Compact for Adult Offender Supervision, and other compacts affecting juveniles particularly in those cases where concurrent or overlapping supervision issues arise. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and therefore are public business. Furthermore, the compacting states shall cooperate and observe their individual and collective duties and responsibilities for the prompt return and acceptance of juveniles subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the purposes and policies of the compact.

Article II. Definitions.

As used in this compact, unless the context clearly requires a different construction:

"Bylaws" means those bylaws established by the Interstate Commission for its governance or for directing or controlling its actions or conduct.

"Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact.

"Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission, and policies adopted by the state council under this compact.

"Compacting state" means any state that has enacted the enabling legislation for this compact.

"Court" means any court having jurisdiction over delinquent, neglected, or dependent children.

"Deputy compact administrator" means the individual, if any, in each compacting state appointed to act on behalf of a compact administrator pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the state council under this compact.

"Interstate Commission" means the Interstate Commission for Juveniles created by Article III of this compact.

"Juvenile" means any person defined as a juvenile in any member state or by the rules of the Interstate Commission, including:

1. Accused delinquent: a person charged with an offense that, if committed by an adult, would be a criminal offense;

2. Accused status offender: a person charged with an offense that would not be a criminal offense if committed by an adult;

3. Adjudicated delinquent: a person found to have committed an offense that, if committed by an adult, would be a criminal offense;

4. Adjudicated status offender: a person found to have committed an offense that would not be a criminal offense if committed by an adult; and

5. Nonoffender: a person in need of supervision who has not been accused of being or adjudicated a status offender or delinquent.

"Noncompacting state" means any state that has not enacted the enabling legislation for this compact.

"Probation or parole" means any kind of supervision or conditional release of juveniles authorized under the laws of the compacting states.

"Rule" means a written statement by the Interstate Commission promulgated pursuant to Article VI of this compact that is of general applicability, implements, interprets or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the commission, that has the force and effect of statutory law in a compacting state, and includes the amendment, repeal, or suspension of an existing rule.

"State" means a state of the United States, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Northern Marianas Islands.

Article III. Interstate Commission for Juveniles.

A. The compacting states hereby create the "Interstate Commission for Juveniles." The commission shall be a body corporate and joint agency of the compacting states. The commission shall have all the responsibilities, powers and duties set forth herein and additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

B. The Interstate Commission shall consist of commissioners appointed by the appropriate appointing authority in each state pursuant to the rules and requirements of each compacting state and in consultation with the State Council for Interstate Juvenile Supervision created in Article IX. The commissioner shall be the compact administrator, deputy compact administrator, or designee from that state who shall serve on the Interstate Commission in such capacity under or pursuant to the applicable law of the compacting state.

C. In addition to the commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations. Such noncommissioner members shall include a member of the national organizations of governors, legislators, state chief justices, attorneys general, Interstate Compact for Adult Offender Supervision, Interstate Compact on the Placement of Children, juvenile justice and juvenile corrections officials, and crime victims. All noncommissioner members of the Interstate Commission shall be ex officio (nonvoting) members. The Interstate Commission may provide in its bylaws for such additional ex officio (nonvoting) members, including members of other national organizations, in such numbers as shall be determined by the commission.

D. Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the Interstate Commission.

E. The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

F. The Interstate Commission shall establish an executive committee, which shall include commission officers, members, and others as determined by the bylaws. The executive committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee shall oversee the day-to-day activities of the administration of the compact managed by an executive director and Interstate Commission staff; administer enforcement and compliance with the provisions of the compact, its bylaws, and rules; and perform other duties as directed by the Interstate Commission or set forth in the bylaws.

G. Each member of the Interstate Commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the Interstate Commission. A member shall vote in person and shall not delegate a vote to another compacting state. However, a commissioner, in consultation with the state council, shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the compacting state at a specific meeting. The bylaws may provide for members' participation in meetings by telephone or other means of telecommunication or electronic communication.

H. The Interstate Commission's bylaws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official records to the extent that they would adversely affect personal privacy rights or proprietary interests.

I. Public notice shall be given of all meetings, and all meetings shall be open to the public except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the Interstate Commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by statute;

3. Disclose trade secrets or commercial or financial information that is privileged or confidential;

4. Involve accusing any person of a crime or formally censuring any person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law-enforcement purposes;

7. Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Interstate Commission with respect to a regulated person or entity for the purpose of regulation or supervision of such person or entity;

8. Disclose information the premature disclosure of which would significantly endanger the stability of a regulated person or entity; or

9. Specifically relate to the Interstate Commission's issuance of a subpoena or its participation in a civil action or other legal proceeding.

J. For every meeting closed pursuant to this provision, the Interstate Commission's legal counsel shall publicly certify that, in the legal counsel's opinion, the meeting may be closed to the public and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes that shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in the minutes.

K. The Interstate Commission shall collect standardized data concerning the interstate movement of juveniles as directed through its rules that shall specify the data to be collected, the means of collection and data exchange, and reporting requirements. Such methods of data collection, exchange, and reporting shall insofar as is reasonably possible conform to up-to-date technology and coordinate its information functions with the appropriate repository of records.

Article IV. Powers and Duties of the Interstate Commission.

The commission shall have the following powers and duties:

1. To provide for dispute resolution among compacting states;

2. To promulgate rules to effect the purposes and obligations as enumerated in this compact, which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

3. To oversee, supervise, and coordinate the interstate movement of juveniles subject to the terms of this compact and any bylaws adopted and rules promulgated by the Interstate Commission;

4. To enforce compliance with the compact provisions, the rules promulgated by the Interstate Commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

5. To establish and maintain offices that shall be located within one or more of the compacting states;

6. To purchase and maintain insurance and bonds;

7. To borrow, accept, hire, or contract for services of personnel;

8. To establish and appoint committees and hire staff that it deems necessary for carrying out its functions including but not limited to an executive committee as required by Article III that shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;

9. To elect or appoint such officers, attorneys, employees, agents, or consultants and to fix their compensation, define their duties and determine their qualifications and to establish the Interstate Commission's personnel policies and programs relating to, inter alia, conflicts of interest, rates of compensation, and qualifications of personnel;

10. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it;

11. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use, any property, real, personal, or mixed;

12. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

13. To establish a budget and make expenditures and levy dues as provided in Article VIII of this compact;

14. To sue and be sued;

15. To adopt a seal and bylaws governing the management and operation of the Interstate Commission;

16. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

17. To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission;

18. To coordinate education, training, and public awareness regarding the interstate movement of juveniles for officials involved in such activity;

19. To establish uniform standards of the reporting, collecting, and exchanging of data; and

20. To maintain its corporate books and records in accordance with the bylaws.

Article V. Organization and Operation of the Interstate Commission.

A. Bylaws.

1. The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:

a. Establishing the fiscal year of the Interstate Commission;

b. Establishing an executive committee and such other committees as may be necessary;

c. Providing for the establishment of committees governing any general or specific delegation of any authority or function of the Interstate Commission;

d. Providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each such meeting;

e. Establishing the titles and responsibilities of the officers of the Interstate Commission;

f. Providing a mechanism for concluding the operations of the Interstate Commission and the return of any surplus funds that may exist upon the termination of the compact after the payment or reserving of all its debts and obligations;

g. Providing start-up rules for initial administration of the compact; and

h. Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. Officers and staff.

1. The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairman and a vice-chairman, each of whom shall have such authority and duties as may be specified in the bylaws. The chairman or, in the chairman's absence or disability, the vice-chairman shall preside at all meetings of the Interstate Commission. The officers so elected shall serve without compensation or remuneration from the Interstate Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any ordinary and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

2. The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions, and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission but shall not be a member and shall hire and supervise such other staff as may be authorized by the Interstate Commission.

C. Qualified immunity, defense and indemnification.

1. The commission's executive director and employees shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by, arising out of, or relating to any actual or alleged act, error, or omission that occurred or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; however, any such person shall not be protected from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

2. The liability of any commissioner or the employee or agent of a commissioner, acting within the scope of such person's employment or duties, for acts, errors, or omissions occurring within such

person's state may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. Nothing in this subdivision shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any such person.

3. The Interstate Commission shall defend the executive director or the employees or representatives of the Interstate Commission and, subject to the approval of the attorney general of the state represented by any commissioner of a compacting state, shall defend such commissioner or the commissioner's representatives or employees in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

4. The Interstate Commission shall indemnify and hold the commissioner of a compacting state, the commissioner's representatives or employees, or the Interstate Commission's representatives or employees harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

Article VI. Rulemaking Functions of the Interstate Commission.

A. The Interstate Commission shall promulgate and publish rules in order to effectively and efficiently achieve the purposes of the compact.

B. Rulemaking shall occur pursuant to the criteria set forth in this article and the bylaws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the Model State Administrative Procedure Act, 1981 Act, Uniform Laws Annotated, vol. 15, p. 1 (2000), or such other administrative procedures act, as the Interstate Commission deems appropriate consistent with due process requirements under the U.S. Constitution as now or hereafter interpreted by the U.S. Supreme Court. All rules and amendments shall become binding as of the date specified, as published with the final version of the rule as approved by the commission.

C. When promulgating a rule, the Interstate Commission shall, at a minimum:

1. Publish the proposed rule's entire text, stating the reasons for that proposed rule;

2. Allow and invite any and all persons to submit written data, facts, opinions and arguments, which information shall be added to the record and be made publicly available;

3. Provide an opportunity for an informal hearing if petitioned by 10 or more persons; and

4. Promulgate a final rule and its effective date, if appropriate, based on input from state or local officials or interested parties.

D. Allow, not later than 60 days after a rule is promulgated, any interested person to file a petition in the United States District Court for the District of Columbia or in the federal district court where the Interstate Commission's principal office is located for judicial review of such rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the rule unlawful and set it aside. For purposes of this subsection, evidence is substantial if it would be considered substantial evidence under the Model State Administrative Procedure Act.

E. If a majority of the legislatures of the compacting states rejects a rule, those states may, by enactment of a statute or resolution in the same manner used to adopt the compact, cause that such rule shall have no further force and effect in any compacting state.

F. The existing rules governing the operation of the Interstate Compact on Juveniles superseded by this act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

G. Upon determination by the Interstate Commission that a state of emergency exists, it may promulgate an emergency rule that shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to the rule as soon as reasonably possible, but no later than 90 days after the effective date of the emergency rule.

Article VII. Oversight, Enforcement and Dispute Resolution by the Interstate Commission.

A. Oversight.

1. The Interstate Commission shall oversee the administration and operations of the interstate movement of juveniles subject to this compact in the compacting states and shall monitor such activities being administered in noncompacting states that might significantly affect compacting states.

2. The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall be received by all the judges, public officers, commissions, and departments of the state government as evidence of the authorized statute and administrative rules. All courts shall take judicial notice of the compact and the rules. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact that may affect the powers, responsibilities or actions of the Interstate Commission, it shall be entitled to receive all service of process in any such proceeding and shall have standing to intervene in the proceeding for all purposes.

B. Dispute resolution.

1. The compacting states shall report to the Interstate Commission on all issues and activities necessary for the administration of the compact as well as issues and activities pertaining to compliance with the provisions of the compact and its bylaws and rules.

2. The Interstate Commission shall attempt, upon the request of a compacting state, to resolve any disputes or other issues that are subject to the compact and that may arise among compacting states and between compacting and noncompacting states. The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

3. The Interstate Commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact using any means set forth in Article XI of this compact.

Article VIII. Finance.

A. The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The Interstate Commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the Interstate Commission and its staff that shall be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of each compacting state and the volume of interstate movement of juveniles in each compacting state and shall promulgate a rule binding upon all compacting states that governs said assessment.

C. The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet them; nor shall the Interstate Commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

D. The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

Article IX. The State Council.

Each member state shall create a State Council for Interstate Juvenile Supervision. While each state may determine the membership of its own state council, its membership shall include at least one representative from the legislative, judicial, and executive branches of government, victims groups, and the compact administrator, deputy compact administrator, or designee. Each compacting state retains the right to determine the qualifications of the compact administrator or deputy compact administrator. Each state council will advise and may exercise oversight and advocacy concerning that state's participation in Interstate Commission activities and other duties as may be determined by that state,

including but not limited to development of policy concerning operations and procedures of the compact within that state.

Article X. Compacting States, Effective Date and Amendment.

A. Any state, the District of Columbia or its designee, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands are eligible to become a compacting state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than 35 of the states. The initial effective date shall be the later of July 1, 2004, or upon enactment of the compact into law by the 35th jurisdiction. Thereafter it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the Interstate Commission on a nonvoting basis prior to adoption of the compact by all states and territories of the United States.

C. The Interstate Commission may propose amendments to the compact for enactment by the compacting states. No amendment shall become effective and binding upon the Interstate Commission and the compacting states unless and until it is enacted into law by unanimous consent of the compacting states.

Article XI. Withdrawal, Default, Termination, and Judicial Enforcement.

A. Withdrawal.

1. Once effective, the compact shall continue in force and remain binding upon each compacting state; provided that a compacting state may withdraw from the compact by specifically repealing the statute that enacted the compact into law.

2. The effective date of withdrawal is the effective date of the repeal.

3. The withdrawing state shall immediately notify the chairman of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The Interstate Commission shall notify the other compacting states of the withdrawing state's intent to withdraw within 60 days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extends beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state's reenacting the compact or upon such later date as determined by the Interstate Commission.

B. Technical assistance, fines, suspension, termination, and default.

1. If the Interstate Commission determines that any compacting state has at any time defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly promulgated rules, the Interstate Commission may impose any or all of the following penalties:

a. Remedial training and technical assistance as directed by the Interstate Commission;

b. Alternative dispute resolution;

c. Fines, fees, and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission; and

d. Suspension or termination of membership in the compact, which shall be imposed only after all other reasonable means of securing compliance under the bylaws and rules have been exhausted and the Interstate Commission has therefore determined that the offending state is in default. Immediate notice of suspension shall be given by the Interstate Commission to the governor, the chief justice or the chief judicial officer of the state, the majority and minority leaders of the defaulting state's legislature, and the state council. The grounds for default include but are not limited to failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, the bylaws, or duly promulgated rules and any other grounds designated in commission bylaws and rules. The Interstate Commission shall immediately notify the defaulting state in writing of the penalty imposed by the Interstate Commission and of the default pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

2. Within 60 days of the effective date of the termination of a defaulting state, the commission shall notify the governor, the chief justice or chief judicial officer, the majority and minority leaders of the defaulting state's legislature, and the state council.

3. The defaulting state is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including any obligations the performance of which extends beyond the effective date of termination.

4. The Interstate Commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

5. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the Interstate Commission pursuant to the rules.

C. Judicial enforcement.

The Interstate Commission may, by majority vote of the members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the federal district where the Interstate Commission has its offices, to enforce compliance with the

provisions of the compact, its duly promulgated rules, and bylaws, against any compacting state in default. In the event that judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney fees.

D. Dissolution of compact.

1. The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be concluded and any surplus funds shall be distributed in accordance with the bylaws.

Article XII. Severability and Construction.

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XIII. Binding Effect of Compact and Other Laws.

A. Other laws.

1. Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

2. All compacting states' laws other than state constitutions and other interstate compacts conflicting with this compact are superseded to the extent of the conflict.

B. Binding effect of the compact.

1. All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the compacting states.

2. All agreements between the Interstate Commission and the compacting states are binding in accordance with their terms.

3. When there is a conflict over meaning or interpretation of Interstate Commission, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation upon the request of a party to the conflict and upon a majority vote of the compacting states.

4. In the event that any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Code 1950, § 16.1-213.1; 1977, c. 559; 2007, cc. 277, 387.

§ 16.1-323.1. State Council for Interstate Compact for Juveniles.

A. The Virginia Council for the Interstate Compact for Juveniles (the Council) is created as a policy council, within the meaning of § 2.2-2100, in the executive branch of state government. The Council shall consist of five members:

1. One representative of the legislative branch appointed by the Joint Rules Committee;

2. One representative of the judicial branch appointed by the Chief Justice of the Supreme Court;

3. One representative of the executive branch appointed by the Governor;

4. One nonlegislative citizen member, representing a victims' group appointed by the Governor; and

5. One nonlegislative citizen member who in addition to serving as a member of the Council shall serve as the compact administrator for Virginia, appointed by the Governor.

The appointments shall be subject to confirmation by the General Assembly. The legislative members and other state officials appointed to the Council shall serve terms coincident with their terms of office. Members who are not state officials shall be appointed for four-year terms. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

B. The Council shall appoint the compact administrator as the Virginia commissioner to the Interstate Commission. The Virginia commissioner shall serve on the Interstate Commission in such capacity under or pursuant to the applicable laws of this Commonwealth.

C. The Council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by the Council, including development of policies concerning operations and procedures of the compact within Virginia.

D. The Council shall elect a chairman and vice-chairman annually. A majority of the members of the Council shall constitute a quorum. Meetings of the Council shall be held at the call of the chairman or whenever the majority of the members so request.

E. Legislative members of the Council shall receive such compensation as provided in § 30-19.12 and nonlegislative citizen members shall receive such compensation as provided in § 2.2-2813 for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Juvenile Justice.

F. The Department of Juvenile Justice shall provide staff support to the Council.

2007, cc. 277, 387.

§§ 16.1-324 through 16.1-330. Repealed.

Repealed by Acts 2007, cc. 277 and 387, cl. 2, effective August 26, 2008.

Article 14.1 - SERIOUS OR HABITUAL OFFENDER COMPREHENSIVE ACTION PROGRAM

§ 16.1-330.1. Serious or Habitual Offender Comprehensive Action Program; definition; disclosure of information; penalty.

A. For purposes of this article, a serious or habitual juvenile offender is a minor who has been (i) adjudicated delinquent or convicted of murder or attempted murder, armed robbery, any felony sexual assault or malicious wounding, or a felony violation of a gang-related crime pursuant to Article 2.1 (§ 18.2-46.1 et seq.) of Chapter 4 of Title 18.2, or (ii) convicted at least three times for offenses which would be felonies or Class 1 misdemeanors if committed by an adult. Qualifying convictions or adjudications shall include only those for offenses occurring after July 1, 1993. However, any Serious or Habitual Offender Comprehensive Action Program (SHOCAP) in existence on July 1, 1993, shall be deemed to have been established pursuant to this article and, notwithstanding the limitations of this subsection, may continue to supervise persons who were being supervised on July 1, 1993. Juvenile offenders under SHOCAP supervision at the time of their eighteenth birthday who have been committed to state care pursuant to subdivision A 14 of § 16.1-278.8 or § 16.1-285.1 may continue to be supervised by SHOCAP until their twenty-first birthday.

B. The Serious or Habitual Offender Comprehensive Action Program (SHOCAP) is a multidisciplinary interagency case management and information sharing system which enables the juvenile and criminal justice system, schools, and social service agencies to make more informed decisions regarding juveniles who repeatedly commit serious criminal and delinquent acts. Each SHOCAP shall supervise serious or habitual juvenile offenders in the community as well as those under probation or parole supervision and enhance current conduct control, supervision and treatment efforts to provide a more coordinated public safety approach to serious juvenile crime, increase the opportunity for success with juvenile offenders and assist in the development of early intervention strategies.

C. Any county or city in the Commonwealth may by action of its governing body establish a SHOCAP committee. The committee shall consist of representatives from local law enforcement, schools, attorneys for the Commonwealth, juvenile court services, juvenile detention centers or group homes, mental and medical health agencies, state and local children and family service agencies, and the Department of Juvenile Justice. Any county or city which establishes a SHOCAP committee shall, within 45 days of such action, notify the Department of Criminal Justice Services. The Department shall issue statewide SHOCAP guidelines and provide technical assistance to local jurisdictions on implementation of SHOCAP.

D. Each SHOCAP committee shall share among its members and with other SHOCAP committees otherwise confidential information on identified serious or habitual juvenile offenders. Every person, including members of the SHOCAP committee, who is to receive confidential information pursuant to this article shall maintain the confidentiality of that information.

All records and reports concerning serious or habitual juvenile offenders made available to members of a SHOCAP committee and all records and reports identifying an individual offender which are generated by the committee from such reports shall be confidential and shall not be disclosed, except as specifically authorized by this article or other applicable law. Disclosure of the information may be made to other staff from member agencies as authorized by the SHOCAP committee for the furtherance of case management, community supervision, conduct control and locating of the offender for the application and coordination of appropriate services. Staff from the member agencies who receive such information will be governed by the confidentiality provisions of this article. The staff from the member agencies who will qualify to have access to the SHOCAP information shall be limited to those individuals who provide direct services to the offender or who provide community conduct control and supervision to the offender.

The provisions of this article authorizing information sharing between and among SHOCAP committees shall take precedence over the provisions of (i) Article 12 (§ 16.1-299 et seq.) of Chapter 11 of this title governing dissemination of court and law-enforcement records concerning juveniles, (ii) Article 5 (§ 22.1-287 et seq.) of Chapter 14 of Title 22.1 governing access to pupil records, (iii) Title 37.2 and any regulations enacted pursuant thereto governing access to juvenile mental health records, and (iv) Title 63.2 and any regulations enacted pursuant thereto governing access to records concerning treatments or services provided to a juvenile.

E. It shall be unlawful for any staff person from a member agency to disclose or to knowingly permit, assist or encourage the unauthorized release of any identifying information contained in any reports or records received or generated by a SHOCAP committee. A violation of this subsection shall be punishable as a Class 3 misdemeanor.

1993, cc. 465, 927; 1996, c. 293; 1999, c. 508; 2004, c. 418.

§ 16.1-330.2. Immunity.

Any staff person or agency who is sharing information within the structure of a SHOCAP committee established pursuant to this article shall have immunity from civil or criminal liability that otherwise might result by reason of the type of information exchanged.

1993, cc. 465, 927.

Article 15 - EMANCIPATION OF MINORS

§ 16.1-331. Petition for emancipation.

Any minor who has reached his sixteenth birthday and is residing in this Commonwealth, or any parent or guardian of such minor, may petition the juvenile and domestic relations district court for the county or city in which either the minor or his parents or guardian resides for a determination that the minor named in the petition be emancipated. The petition shall contain, in addition to the information required by § 16.1-262, the gender of the minor and, if the petitioner is not the minor, the name of the petitioner and the relationship of the petitioner to the minor. If the petition is based on the minor's desire to enter into a valid marriage, the petition shall also include the name, age, date of birth, if

known, and residence of the intended spouse. The petitioner shall also attach copies of any criminal records of each individual intending to be married. The petitioner shall also attach copies of any protective order issued between the individuals to be married.

1986, c. 506; 2016, cc. 457, 543.

§ 16.1-332. Orders of court; investigation, report and appointment of counsel.

If deemed appropriate the court may (i) require the local department of social services or any other agency or person to investigate the allegations in the petition and file a report of that investigation with the court, (ii) appoint counsel for the minor's parents or guardian, or (iii) make any other orders regarding the matter which the court deems appropriate. In any case pursuant to this article the court shall appoint counsel for the minor to serve as guardian ad litem.

1986, c. 506; 2002, c. 747.

§ 16.1-333. Findings necessary to order that minor is emancipated.

The court may enter an order declaring the minor emancipated if, after a hearing, it is found that: (i) the minor has entered into a valid marriage, whether or not that marriage has been terminated by dissolution; (ii) the minor is on active duty with any of the armed forces of the United States of America; (iii) the minor willingly lives separate and apart from his parents or guardian, with the consent or acquiescence of the parents or guardian, and that the minor is or is capable of supporting himself and competently managing his own financial affairs; or (iv) the minor desires to enter into a valid marriage and the requirements of § 16.1-333.1 are met.

1986, c. 506; 2016, cc. 457, 543.

§ 16.1-333.1. Written findings necessary to order that minor is emancipated on the basis of intent to marry.

The court may enter an order declaring such a minor who desires to get married emancipated if, after a hearing where both individuals intending to marry are present, the court makes written findings that:

1. It is the minor's own will that the minor enter into marriage, and the minor is not being compelled against the minor's will by force, threats, persuasions, menace, or duress;

2. The individuals to be married are mature enough to make such a decision to marry;

3. The marriage will not endanger the safety of the minor. In making this finding, the court shall consider (i) the age difference between the parties intending to be married; (ii) whether either individual to be married has a criminal record containing any conviction of an act of violence, as defined in § 19.2-297.1, or any conviction of a barrier crime, as defined in § 19.2-392.02; and (iii) any history of violence between the parties to be married; and

4. It is in the best interests of the minor petitioning for an order of emancipation that such order be entered. Neither a past or current pregnancy of either individual to be married or between the individuals to be married nor the wishes of the parents or legal guardians of the minor desiring to be mar-

ried shall be sufficient evidence to establish that the best interests of the minor would be served by entering the order of emancipation.

2016, cc. 457, 543; 2017, c. 809.

§ 16.1-334. Effects of order.

An order that a minor is emancipated shall have the following effects:

1. The minor may consent to medical, dental, or psychiatric care, without parental consent, knowledge, or liability;

2. The minor may enter into a binding contract or execute a will;

3. The minor may sue and be sued in his own name;

4. The minor shall be entitled to his own earnings and shall be free of control by his parents or guardian;

5. The minor may establish his own residence;

6. The minor may buy and sell real property;

7. The minor may not thereafter be the subject of a petition under this chapter as abused, neglected, abandoned, in need of services, in need of supervision, or in violation of a juvenile curfew ordinance enacted by a local governing body;

8. The minor may enroll in any school or institution of higher education, without parental consent;

9. The minor may secure a driver's license under § 46.2-334 or § 46.2-335 without parental consent;

10. The parents of the minor shall no longer be the guardians of the minor;

11. The parents of a minor shall be relieved of any obligations respecting his school attendance under Article 1 (§ 22.1-254 et seq.) of Chapter 14 of Title 22.1;

12. The parents shall be relieved of all obligation to support the minor;

13. The minor shall be emancipated for the purposes of parental liability for his acts;

14. The minor may execute releases in his own name;

15. The minor may not have a guardian ad litem appointed for him pursuant to any statute solely because he is under age 18; and

16. The minor may marry without parental, judicial, or other consent.

The acts done when such order is or is purported to be in effect shall be valid notwithstanding any subsequent action terminating such order or a judicial determination that the order was void ab initio.

1986, c. 506; 1990, c. 568; 1993, c. 778.

§ 16.1-334.1. Identification card issued to minor by DMV.

When entering an emancipation order under § 16.1-333, the court shall issue to the emancipated minor a copy of the order. Upon application to the Department of Motor Vehicles and submission of the copy, the Department shall issue to the minor an identification card containing the minor's photograph, a statement that such minor is emancipated, and a listing of all effects of the emancipation order as set forth in § 16.1-334.

1990, c. 568.

Article 16 - PSYCHIATRIC TREATMENT OF MINORS ACT

§ 16.1-335. Short title.

The provisions of this article shall be known and may be cited as "The Psychiatric Treatment of Minors Act."

1990, c. 975; 2010, cc. 778, 825.

§ 16.1-336. Definitions.

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

"Community services board" has the same meaning as provided in § 37.2-100. Whenever the term community services board appears, it shall include behavioral health authority, as that term is defined in § 37.2-100.

"Consent" means the voluntary, express, and informed agreement to treatment in a mental health facility by a minor 14 years of age or older and by a parent or a legally authorized custodian.

"Designee of the local community services board" means an examiner designated by the local community services board who (i) is skilled in the assessment and treatment of mental illness, (ii) has completed a certification program approved by the Department of Behavioral Health and Developmental Services, (iii) is able to provide an independent examination of the minor, (iv) is not related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (v) has no financial interest in the admission or treatment of the minor being evaluated, (vi) has no investment interest in the facility detaining or admitting the minor under this article, and (vii) except for employees of state hospitals and of the U.S. Department of Veterans Affairs, is not employed by the facility.

"Employee" means an employee of the local community services board who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department of Behavioral Health and Developmental Services.

"Incapable of making an informed decision" means unable to understand the nature, extent, or probable consequences of a proposed treatment or unable to make a rational evaluation of the risks and benefits of the proposed treatment as compared with the risks and benefits of alternatives to the treatment. Persons with dysphasia or other communication disorders who are mentally competent and able to communicate shall not be considered incapable of giving informed consent.

"Inpatient treatment" means placement for observation, diagnosis, or treatment of mental illness in a psychiatric hospital or in any other type of mental health facility determined by the Department of Behavioral Health and Developmental Services to be substantially similar to a psychiatric hospital with respect to restrictions on freedom and therapeutic intrusiveness.

"Investment interest" means the ownership or holding of an equity or debt security, including shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments.

"Judge" means a juvenile and domestic relations district judge. In addition, "judge" includes a retired judge sitting by designation pursuant to § 16.1-69.35, substitute judge, or special justice authorized by § 37.2-803 who has completed a training program regarding the provisions of this article, prescribed by the Executive Secretary of the Supreme Court.

"Least restrictive alternative" means the treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the minor or others from physical injury.

"Mental health facility" means a public or private facility for the treatment of mental illness operated or licensed by the Department of Behavioral Health and Developmental Services.

"Mental illness" means a substantial disorder of the minor's cognitive, volitional, or emotional processes that demonstrably and significantly impairs judgment or capacity to recognize reality or to control behavior. "Mental illness" may include substance abuse, which is the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional, or physical impairment and cause socially dysfunctional or socially disordering behavior. Intellectual disability, head injury, a learning disability, or a seizure disorder is not sufficient, in itself, to justify a finding of mental illness within the meaning of this article.

"Minor" means a person less than 18 years of age.

"Parent" means (i) a biological or adoptive parent who has legal custody of the minor, including either parent if custody is shared under a joint decree or agreement, (ii) a biological or adoptive parent with whom the minor regularly resides, (iii) a person judicially appointed as a legal guardian of the minor, or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law. The director of the local department of social services, or his designee, may stand as the minor's parent when the minor is in the legal custody of the local department of social services.

"Qualified evaluator" means a psychiatrist or a psychologist licensed in Virginia by either the Board of Medicine or the Board of Psychology, or if such psychiatrist or psychologist is unavailable, (i) any mental health professional licensed in Virginia through the Department of Health Professions as a clinical social worker, professional counselor, marriage and family therapist, or psychiatric advanced practice

registered nurse or (ii) any mental health professional employed by a community services board. All qualified evaluators shall (a) be skilled in the diagnosis and treatment of mental illness in minors, (b) be familiar with the provisions of this article, and (c) have completed a certification program approved by the Department of Behavioral Health and Developmental Services. The qualified evaluator shall (1) not be related by blood, marriage, or adoption to, or is not the legal guardian of, the minor being evaluated, (2) not be responsible for treating the minor, (3) have no financial interest in the admission or treatment of the minor, (4) have no investment interest in the facility detaining or admitting the minor under this article, and (5) except for employees of state hospitals, the U.S. Department of Veterans Affairs, and community services boards, not be employed by the facility.

"Treatment" means any planned intervention intended to improve a minor's functioning in those areas which show impairment as a result of mental illness.

1990, c. 975; 1991, c. 159; 2007, cc. 500, 897; 2008, cc. 139, 774; 2009, cc. 455, 555, 813, 840; 2010, cc. 778, 825; 2012, cc. 476, 507; 2023, c. 183.

§ 16.1-336.1. Admission forms.

The Office of the Executive Secretary of the Supreme Court of Virginia shall prepare the petitions, orders, and such other legal forms as may be required in proceedings for custody, detention, and involuntary admission pursuant to this article, and shall distribute such forms to the clerks of the juvenile and domestic relations district courts of the Commonwealth. The Department of Behavioral Health and Developmental Services shall prepare the preadmission screening report, evaluation, and such other clinical forms as may be required in proceedings for custody, detention, and admission pursuant to this article, and shall distribute such forms to community services boards, mental health care providers, and directors of state facilities.

2010, cc. 778, 825.

§ 16.1-337. Inpatient treatment of minors; general applicability; disclosure of records.

A. A minor may be admitted to a mental health facility for inpatient treatment only pursuant to § 16.1-338, 16.1-339, or 16.1-340.1 or in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345. The provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 and § 16.1-337.1 relating to the confidentiality of files, papers, and records shall apply to proceedings under this article.

B. Any health care provider, as defined in § 32.1-127.1:03, or other provider rendering services to a minor who is the subject of proceedings under this article, upon request, shall disclose to a magistrate, the juvenile intake officer, the court, the minor's attorney, the minor's guardian ad litem, the qualified evaluator performing the evaluation required under §§ 16.1-338, 16.1-339, and 16.1-342, the community services board or its designee performing the evaluation, preadmission screening, or monitoring duties under this article, or a law-enforcement officer any and all information that is necessary and appropriate to enable each of them to perform his duties under this article. These health care providers and other service providers shall disclose to one another health records and information where

necessary to provide care and treatment to the person and to monitor that care and treatment. Health records disclosed to a law-enforcement officer shall be limited to information necessary to protect the officer, the minor, or the public from physical injury or to address the health care needs of the minor. Information disclosed to a law-enforcement officer shall not be used for any other purpose, disclosed to others, or retained.

Any health care provider providing services to a minor who is the subject of proceedings under this article shall make a reasonable attempt to notify the minor's parent of information that is directly relevant to such individual's involvement with the minor's health care, which may include the minor's location and general condition, in accordance with subdivision D 34 of § 32.1-127.1:03, unless the provider has actual knowledge that the parent is currently prohibited by court order from contacting the minor. No health care provider shall be required to notify a person's family member or personal representative pursuant to this section if the health care provider has actual knowledge that such notice has been provided.

Any health care provider disclosing records pursuant to this section shall be immune from civil liability for any harm resulting from the disclosure, including any liability under the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.), as amended, unless the person or provider disclosing such records intended the harm or acted in bad faith.

C. Any order entered where a minor is the subject of proceedings under this article shall provide for the disclosure of health records pursuant to subsection B. This subsection shall not preclude any other disclosures as required or permitted by law.

1990, c. 975; 1992, c. 539; 2008, cc. 782, 850, 870; 2009, cc. 455, 555; 2010, cc. 778, 825; 2016, cc. 569, 693; 2018, c. 846.

§ 16.1-337.1. Order of involuntary commitment or mandatory outpatient treatment forwarded to Central Criminal Records Exchange; certain voluntary admissions forwarded to Central Criminal Records Exchange; firearm background check.

A. The order from a commitment hearing issued pursuant to this article for involuntary admission or mandatory outpatient treatment for a minor 14 years of age or older and the certification of any minor 14 years of age or older who has been the subject of a temporary detention order pursuant to § 16.1-340.1 and who, after being advised by the court that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 16.1-338 shall be filed by the court with the clerk of the juvenile and domestic relations district court for the county or city where the hearing took place as soon as practicable but no later than the close of business on the next business day following the completion of the hearing.

B. Upon receipt of any order from a commitment hearing issued pursuant to this article for involuntary admission of a minor 14 years of age or older to a facility, the clerk of court shall, as soon as practicable but no later than the close of business on the next following business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order.

Upon receipt of any order from a commitment hearing issued pursuant to this article for mandatory outpatient treatment of a minor 14 years of age or older, the clerk of court shall, prior to the close of that business day, certify and forward to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of the order.

C. The clerk of court shall also, as soon as practicable but no later than the close of business on the next following business day, forward upon receipt to the Central Criminal Records Exchange, on a form provided by the Exchange, certification of any minor 14 years of age or older who has been the subject of a temporary detention order pursuant to § 16.1-340.1 and who, after being advised by the court that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 16.1-338.

D. Except as provided in subdivision A 1 of § 19.2-389, the copy of the forms and orders sent to the Central Criminal Records Exchange pursuant to subsection B, and the forms and certifications sent to the Central Criminal Records Exchange regarding voluntary admission pursuant to subsection C, shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange with any form, order, or certification required by subsection B or C. The Department of State Police shall forward only a person's eligibility to possess, purchase, or transfer a firearm to the National Instant Criminal Background Check System.

2018, c. 846.

§ 16.1-338. Parental admission of minors younger than 14 and nonobjecting minors 14 years of age or older.

A. A minor younger than 14 years of age may be admitted to a willing mental health facility for inpatient treatment upon application and with the consent of a parent. 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 parent.

B. Admission of a minor under this section shall be approved by a qualified evaluator who has conducted a personal examination of the minor within 48 hours after admission and has made the following written findings:

1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment; and

2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and

3. If the minor is 14 years of age or older, that he has been provided with an explanation of his rights under this Act as they would apply if he were to object to admission, and that he has consented to admission; and

4. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide, in lieu of the examination required by this section, a preadmission screening report conducted by an employee or designee of the community services board and shall ensure that the necessary written findings have been made before approving the admission. A copy of the written findings of the evaluation or preadmission screening report required by this section shall be provided to the consenting parent and the parent shall have the opportunity to discuss the findings with the qualified evaluator or employee or designee of the community services board.

C. Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured. A copy of the plan shall be provided to the minor and to his parents.

D. If the parent who consented to a minor's admission under this section revokes his consent at any time, or if a minor 14 or older objects at any time to further treatment, the minor shall be discharged within 48 hours to the custody of such consenting parent unless the minor's continued hospitalization is authorized pursuant to § 16.1-339, 16.1-340.1, or 16.1-345. If the 48-hour time period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 48 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. If a minor 14 or older objects to further treatment, the mental health facility shall (i) immediately notify the consenting parent of the minor's objections and (ii) provide to the consenting parent a summary, prepared by the Office of the Attorney General, of the procedures for requesting continued treatment of the minor pursuant to § 16.1-339, 16.1-340.1, or 16.1-345.

E. Inpatient treatment of a minor hospitalized under this section may not exceed 90 consecutive days unless it has been authorized by appropriate hospital medical personnel, based upon their written findings that the criteria set forth in subsection B of this section continue to be met, after such persons have examined the minor and interviewed the consenting parent and reviewed reports submitted by members of the facility staff familiar with the minor's condition.

F. Any minor admitted under this section while younger than 14 and his consenting parent shall be informed orally and in writing by the director of the facility for inpatient treatment within 10 days of his fourteenth birthday that continued voluntary treatment under the authority of this section requires his consent.

G. Any minor 14 years of age or older who joins in an application and consents to admission pursuant to subsection A, shall, in addition to his parent, have the right to access his health information. The concurrent authorization of both the parent and the minor shall be required to disclose such minor's health information.

H. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.

1990, c. 975; 1991, c. 159; 2005, cc. 181, 227; 2008, cc. 783, 808; 2009, cc. 455, 555; 2010, cc. 778, 825; 2015, cc. 504, 543.

§ 16.1-339. Parental admission of an objecting minor 14 years of age or older.

A. A minor 14 years of age or older who (i) objects to admission or (ii) is incapable of making an informed decision may be admitted to a willing facility for up to 120 hours, pending the review required by subsections B and C, upon the application of a parent. If admission is sought to a state hospital, the community services board serving the area in which the minor resides shall provide the preadmission screening report required by subsection B of § 16.1-338 and shall ensure that the necessary written findings, except the minor's consent, have been made before approving the admission.

B. A minor admitted under this section shall be examined within 24 hours of his admission by a qualified evaluator designated by the community services board serving the area where the facility is located. If the 24-hour time period expires on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the 24 hours shall extend to the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. The evaluator shall prepare a report that shall include written findings as to whether:

1. The minor appears to have a mental illness serious enough to warrant inpatient treatment and is reasonably likely to benefit from the treatment;

2. The minor has been provided with a clinically appropriate explanation of the nature and purpose of the treatment; and

3. All available modalities of treatment less restrictive than inpatient treatment have been considered and no less restrictive alternative is available that would offer comparable benefits to the minor.

The qualified evaluator shall submit his report to the juvenile and domestic relations district court for the jurisdiction in which the facility is located.

C. Upon admission of a minor under this section, the facility shall file a petition for judicial approval no sooner than 24 hours and no later than 120 hours after admission with the juvenile and domestic relations district court for the jurisdiction in which the facility is located. To the extent available, the petition shall contain the information required by § 16.1-339.1. A copy of this petition shall be delivered to the

minor's consenting parent. Upon receipt of the petition and of the evaluator's report submitted pursuant to subsection B, the judge shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has been determined that the minor has retained counsel. A copy of the evaluator's report shall be provided to the minor's counsel and guardian ad litem. The court and the guardian ad litem shall review the petition and evaluator's report and shall ascertain the views of the minor, the minor's consenting parent, the evaluator, and the attending psychiatrist. The court shall conduct its review in such place and manner, including the facility, as it deems to be in the best interests of the minor. Based upon its review and the recommendations of the guardian ad litem, the court shall order one of the following dispositions:

1. If the court finds that the minor does not meet the criteria for admission specified in subsection B, the court shall issue an order directing the facility to release the minor into the custody of the parent who consented to the minor's admission. However, nothing herein shall be deemed to affect the terms and provisions of any valid court order of custody affecting the minor.

2. If the court finds that the minor meets the criteria for admission specified in subsection B, the court shall issue an order authorizing continued hospitalization of the minor for up to 90 days on the basis of the parent's consent.

Within 10 days after the admission of a minor under this section, the director of the facility or the director's designee shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and has been explained to the parent consenting to the admission and to the minor. A copy of the plan shall also be provided to the guardian ad litem and to counsel for the minor. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured.

3. If the court determines that the available information is insufficient to permit an informed determination regarding whether the minor meets the criteria specified in subsection B, the court shall schedule a commitment hearing that shall be conducted in accordance with the procedures specified in §§ 16.1-341 through 16.1-345. The minor may be detained in the hospital for up to 120 additional hours pending the holding of the commitment hearing.

D. A minor admitted under this section who rescinds his objection may be retained in the hospital pursuant to § 16.1-338.

E. If the parent who consented to a minor's admission under this section revokes his consent at any time, the minor shall be released within 48 hours to the parent's custody unless the minor's continued hospitalization is authorized pursuant to § 16.1-340.1 or 16.1-345. If the 48-hour time period expires on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the 48 hours shall

extend to the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

F. A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court or circuit court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody.

1990, c. 975; 1991, c. 159; 2005, c. 716; 2007, cc. 500, 897; 2008, cc. 139, 774, 783, 807, 808; 2009, cc. 455, 555; 2010, cc. 778, 825; 2015, cc. 504, 535, 543.

§ 16.1-339.1. Minors in detention homes or shelter care facilities.

If a minor admitted to a mental health facility pursuant to this article was in a detention home or a shelter care facility at the time of his admission, the director of the detention home or shelter care facility or his designee shall provide, if available, the charges against the minor that are the basis of the detention and the names and addresses of the minor's parents and the juvenile and domestic relations district court ordering the minor's placement in detention or shelter care to the mental health facility and to the juvenile and domestic relations district court for the jurisdiction in which the mental health facility is located if different from the court ordering the minor's placement in detention or shelter care.

2009, cc. 455, 555.

§ 16.1-340. Emergency custody; issuance and execution of order.

A. Any magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion, an emergency custody order when he has probable cause to believe that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. Any emergency custody order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law. To the extent possible, the petition shall contain the information required by § 16.1-339.1.

When considering whether there is probable cause to issue an emergency custody order, the magistrate may, in addition to the petition, consider (1) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (2) any past actions of the minor, (3) any past mental health treatment of the minor, (4) any relevant hearsay evidence, (5) any medical records

available, (6) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (7) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue an emergency custody order.

B. Any minor for whom an emergency custody order is issued shall be taken into custody and transported to a convenient location to be evaluated to determine whether he meets the criteria for temporary detention pursuant to § 16.1-340.1 and to assess the need for hospitalization or treatment. The evaluation shall be made by a person designated by the community services board serving the area in which the minor is located who is skilled in the diagnosis and treatment of mental illness and who has completed a certification program approved by the Department.

C. The magistrate issuing an emergency custody order shall specify the primary law-enforcement agency and jurisdiction to execute the emergency custody order and provide transportation. However, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner, upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order. In such cases, a copy of the emergency custody order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the community services board or its designee responsible for conducting the evaluation. The community services board or its designee conducting the evaluation shall return a copy of the emergency custody order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

Transportation under this section shall include transportation to a medical facility as may be necessary to obtain emergency medical evaluation or treatment that shall be conducted immediately in accordance with state and federal law. Transportation under this section shall include transportation to a medical facility for a medical evaluation if a physician at the hospital in which the minor subject to the emergency custody order may be detained requires a medical evaluation prior to admission.

D. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall order the primary law-enforcement agency from the jurisdiction served by the

community services board that designated the person to perform the evaluation required in subsection B to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. If the community services board serves more than one jurisdiction, the magistrate shall designate the primary law-enforcement agency from the particular jurisdiction within the community services board's service area where the minor who is the subject of the emergency custody order was taken into custody or, if the minor has not yet been taken into custody, the primary law-enforcement agency from the jurisdiction where the minor is presently located to execute the order and provide transportation.

E. The law-enforcement agency or alternative transportation provider providing transportation pursuant to this section may transfer custody of the minor to the facility or location to which the minor is transported for the evaluation required in subsection B, G, or H if the facility or location (i) is licensed to provide the level of security necessary to protect both the minor and others from harm, (ii) is actually capable of providing the level of security necessary to protect the minor and others from harm, and (iii) in cases in which transportation is provided by a law-enforcement agency, has entered into an agreement or memorandum of understanding with the law-enforcement agency setting forth the terms and conditions under which it will accept a transfer of custody, provided, however, that the facility or location may not require the law-enforcement agency to pay any fees or costs for the transfer of custody.

F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing an emergency custody order pursuant to this section.

G. A law-enforcement officer who, based upon his observation or the reliable reports of others, has probable cause to believe that a minor meets the criteria for emergency custody as stated in this section may take that minor into custody and transport that minor to an appropriate location to assess the need for hospitalization or treatment without prior authorization. A law-enforcement officer who takes a person into custody pursuant to this subsection or subsection H may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of obtaining the assessment. Such evaluation shall be conducted immediately. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the minor into custody.

H. A law-enforcement officer who is transporting a minor who has voluntarily consented to be transported to a facility for the purpose of assessment or evaluation and who is beyond the territorial limits of the county, city, or town in which he serves may take such minor into custody and transport him to an appropriate location to assess the need for hospitalization or treatment without prior authorization when the law-enforcement officer determines (i) that the minor has revoked consent to be transported to a facility for the purpose of assessment or evaluation and (ii) based upon his observations, that probable cause exists to believe that the minor meets the criteria for emergency custody as stated in this section. The period of custody shall not exceed eight hours from the time the law-enforcement officer takes the minor into custody.

I. A representative of the primary law-enforcement agency specified to execute an emergency custody order or a representative of the law-enforcement agency employing a law-enforcement officer who takes a person into custody pursuant to subsection G or H shall notify the community services board responsible for conducting the evaluation required in subsection B, G, or H as soon as practicable after execution of the emergency custody order or after the person has been taken into custody pursuant to subsection G or H.

J. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a minor in his custody as provided in this section.

K. The minor shall remain in custody until a temporary detention order is issued, until the minor is released, or until the emergency custody order expires. An emergency custody order shall be valid for a period not to exceed eight hours from the time of execution.

L. If an emergency custody order is not executed within eight hours of its issuance, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if such office is not open, to any magistrate serving the jurisdiction of the issuing court.

M. In addition to the eight-hour period of emergency custody set forth in subsection G, H, or K, if the minor is detained in a state facility pursuant to subsection D of § 16.1-340.1, the state facility and an employee or designee of the community services board may, for an additional four hours, continue to attempt to identify an alternative facility that is able and willing to provide temporary detention and appropriate care to the minor.

N. Payments shall be made pursuant to § 37.2-804 to licensed health care providers for medical screening and assessment services provided to minors with mental illnesses while in emergency custody.

O. No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

1990, c. 975; 1991, c. 159; 1992, c. 884; 2000, cc. 65, 246; 2001, c. 837; 2004, c. 283; 2005, c. 346; 2006, c. 401; 2008, cc. 783, 808; 2009, cc. 455, 555; 2010, cc. 778, 825; 2011, c. 249; 2014, cc. 691, 761; 2015, cc. 297, 308; 2018, c. 570.

§ 16.1-340.1. Involuntary temporary detention; issuance and execution of order.

A. A magistrate shall issue, upon the sworn petition of a minor's treating physician or parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, or upon his own motion and only after an evaluation conducted in-person or by means of a two-way electronic video and audio communication system as authorized in § 16.1-345.1 by an employee or designee of the local community services board to determine

whether the minor meets the criteria for temporary detention, a temporary detention order if it appears from all evidence readily available, including any recommendation from a physician, clinical psychologist, clinical social worker, or licensed professional counselor treating the person, that (i) because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; and (ii) the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment. The magistrate shall also consider the recommendations of the minor's parents and of any treating or examining physician licensed in Virginia if available either verbally or in writing prior to rendering a decision. To the extent possible, the petition shall contain the information required by § 16.1-339.1. Any temporary detention order entered pursuant to this section shall be effective until such time as the juvenile and domestic relations district court serving the jurisdiction in which the minor is located conducts a hearing pursuant to subsection B of § 16.1-341. Any temporary detention order entered pursuant to this section shall provide for the disclosure of medical records pursuant to subsection B of § 16.1-337. This subsection shall not preclude any other disclosures as required or permitted by law.

B. When considering whether there is probable cause to issue a temporary detention order, the magistrate may, in addition to the petition, consider (i) the recommendations of any treating or examining physician, psychologist, clinical social worker, or licensed professional counselor licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any relevant hearsay evidence, (v) any medical records available, (vi) any affidavits submitted, if the witness is unavailable and it so states in the affidavit, and (vii) any other information available that the magistrate considers relevant to the determination of whether probable cause exists to issue a temporary detention order.

C. A magistrate may issue a temporary detention order without an emergency custody order proceeding. A magistrate may issue a temporary detention order without a prior evaluation pursuant to subsection A if (i) the minor has been personally examined within the previous 72 hours by an employee or designee of the local community services board or (ii) there is a significant physical, psychological, or medical risk to the minor or to others associated with conducting such evaluation.

D. An employee or designee of the local community services board shall determine the facility of temporary detention in accordance with the provisions of § 16.1-340.1:1 for all minors detained pursuant to this section. An employee or designee of the local community services board may change the facility of temporary detention and may designate an alternative facility for temporary detention at any point during the period of temporary detention if it is determined that the alternative facility is a more appropriate facility for temporary detention of the minor given the specific security, medical, or behavioral health needs of the minor. In cases in which the facility of temporary detention is changed following transfer of custody to an initial facility of temporary detention, transportation of the minor to the

alternative facility of temporary detention shall be provided in accordance with the provisions of § 16.1-340.2. The initial facility of temporary detention shall be identified on the preadmission screening report and indicated on the temporary detention order; however, if an employee or designee of the local community services board designates an alternative facility, that employee or designee shall provide written notice forthwith, on a form developed by the Executive Secretary of the Supreme Court of Virginia, to the clerk of the issuing court of the name and address of the alternative facility. Subject to the provisions of § 16.1-340.1:1, if a facility of temporary detention cannot be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340, the minor shall be detained in a state facility for the treatment of minors with mental illness and such facility shall be indicated on the temporary detention order. Except for minors who are detained for a criminal offense by a juvenile and domestic relations district court and who require hospitalization in accordance with this article, the minor shall not be detained in a jail or other place of confinement for persons charged with criminal offenses and shall remain in the custody of law enforcement until the minor is either detained within a secure facility or custody has been accepted by the appropriate personnel designated by either the initial facility of temporary detention identified in the temporary detention order or by the alternative facility of temporary detention designated by the employee or designee of the local community services board pursuant to this subsection.

E. Any facility caring for a minor placed with it pursuant to a temporary detention order is authorized to provide emergency medical and psychiatric services within its capabilities when the facility determines that the services are in the best interests of the minor within its care. The costs incurred as a result of the hearings and by the facility in providing services during the period of temporary detention shall be paid and recovered pursuant to § 37.2-804. The maximum costs reimbursable by the Commonwealth pursuant to this section shall be established by the State Board of Medical Assistance Services based on reasonable criteria. The State Board of Medical Assistance Services shall, by regulation, establish a reasonable rate per day of inpatient care for temporary detention.

F. The employee or designee of the local community services board who is conducting the evaluation pursuant to this section shall determine, prior to the issuance of the temporary detention order, the insurance status of the minor. Where coverage by a third party payor exists, the facility seeking reimbursement under this section shall first seek reimbursement from the third party payor. The Commonwealth shall reimburse the facility only for the balance of costs remaining after the allowances covered by the third party payor have been received.

G. The duration of temporary detention shall be sufficient to allow for completion of the examination required by § 16.1-342, preparation of the preadmission screening report required by § 16.1-340.4, and initiation of mental health treatment to stabilize the minor's psychiatric condition to avoid involuntary commitment where possible, but shall not exceed 96 hours prior to a hearing. If the 96-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or, if the minor has been admitted to a facility of temporary detention, day or part of a day on which the clerk's office is lawfully closed, the minor may be detained, as herein provided, until the close of business on the next day that

is not a Saturday, Sunday, legal holiday, or, if the minor has been admitted to a facility of temporary detention, day or part of a day on which the clerk's office is lawfully closed. The minor may be released, pursuant to § 16.1-340.3, before the 96-hour period herein specified has run.

H. If a temporary detention order is not executed within 24 hours of its issuance, or within a shorter period as is specified in the order, the order shall be void and shall be returned unexecuted to the office of the clerk of the issuing court or, if the office is not open, to any magistrate serving the jurisdiction of the issuing court. Subsequent orders may be issued upon the original petition within 96 hours after the petition is filed. However, a magistrate must again obtain the advice of an employee or designee of the local community services board prior to issuing a subsequent order upon the original petition. Any petition for which no temporary detention order or other process in connection therewith is served on the subject of the petition within 96 hours after the petition is filed shall be void and shall be returned to the office of the clerk of the issuing court.

I. For purposes of this section, a health care provider or an employee or designee of the local community services board shall not be required to encrypt any email containing information or medical records provided to a magistrate unless there is reason to believe that a third party will attempt to intercept the email.

J. The employee or designee of the local community services board who is conducting the evaluation pursuant to this section shall, if he recommends that the minor should not be subject to a temporary detention order, inform the petitioner and an on-site treating physician of his recommendation.

K. Each community services board shall provide to each juvenile and domestic relations district court and magistrate's office within its service area a list of employees and designees who are available to perform the evaluations required herein.

2010, cc. 778, 825; 2014, cc. 691, 773; 2018, c. 20; 2020, c. 945; 2022, c. 509; 2023, c. 636.

§ 16.1-340.1:1. Facility of temporary detention.

A. In each case in which an employee or designee of the local community services board is required to make an evaluation of a minor pursuant to subsection B, G, or H of § 16.1-340, an employee or designee of the local community services board shall, upon being notified of the need for such evaluation, contact the state facility for the area in which the community services board is located and notify the state facility that the minor will be transported to the facility upon issuance of a temporary detention order if no other facility of temporary detention can be identified by the time of the expiration of the period of emergency custody pursuant to § 16.1-340. Upon completion of the evaluation, the employee or designee of the local community services board shall convey to the state facility information about the minor necessary to allow the state facility to determine the services the minor will require upon admission.

B. A state facility may, following the notice in accordance with subsection A, conduct a search for an alternative facility that is able and willing to provide temporary detention and appropriate care to the minor, which may include another state facility if the state facility notified in accordance with

subsection A is unable to provide temporary detention and appropriate care for the minor. Under no circumstances shall a state facility fail or refuse to admit a minor who meets the criteria for temporary detention pursuant to § 16.1-340.1 unless an alternative facility that is able to provide temporary detention and appropriate care agrees to accept the minor for temporary detention, and the minor shall not during the duration of the temporary detention order be released from custody except for purposes of transporting the minor to the state facility or alternative facility in accordance with the provisions of § 16.1-340.2. If an alternative facility is identified and agrees to accept the minor for temporary detention, the state facility shall notify the community services board, and an employee or designee of the community services board shall designate the alternative facility on the prescreening report.

C. The facility of temporary detention designated in accordance with this section shall be one that has been approved pursuant to regulations of the State Board of Behavioral Health and Developmental Services.

2014, cc. 691, 773; 2015, cc. 121, 309.

§ 16.1-340.2. Transportation of minor in the temporary detention process.

A. In specifying the primary law-enforcement agency and jurisdiction for purposes of this section, the magistrate shall specify in the temporary detention order the law-enforcement agency of the jurisdiction in which the minor resides to execute the order and, in cases in which transportation is ordered to be provided by the primary law-enforcement agency, provide transportation. However, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located shall execute the order and provide transportation.

B. The magistrate issuing the temporary detention order shall specify the law-enforcement agency to execute the order and provide transportation. However, the magistrate may authorize transportation by an alternative transportation provider, including a parent, family member, or friend of the minor who is the subject of the temporary detention order, a representative of the community services board, or other transportation provider with personnel trained to provide transportation in a safe manner upon determining, following consideration of information provided by the petitioner; the community services board or its designee; the local law-enforcement agency, if any; the minor's treating physician, if any; or other persons who are available and have knowledge of the minor, and, when the magistrate deems appropriate, the proposed alternative transportation provider, either in person or via two-way electronic video and audio or telephone communication system, that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. When transportation is ordered to be provided by an alternative transportation provider, the magistrate shall order the specified primary law-enforcement agency to execute the order, to take the minor into custody, and to transfer custody of the minor to the alternative transportation provider identified in the order.

In such cases any case in which a magistrate authorizes transportation of a minor subject to a temporary detention order by an alternative transportation provider, a copy of the temporary detention order shall accompany the minor being transported pursuant to this section at all times and shall be delivered by the alternative transportation provider to the temporary detention facility. The temporary detention facility shall return a copy of the temporary detention order to the court designated by the magistrate as soon as is practicable. Delivery of an order to a law-enforcement officer or alternative transportation provider and return of an order to the court may be accomplished electronically or by facsimile.

The order may include transportation of the minor to such other medical facility as may be necessary to obtain further medical evaluation or treatment prior to placement as required by a physician at the admitting temporary detention facility. Nothing herein shall preclude a law-enforcement officer or alternative transportation provider from obtaining emergency medical treatment or further medical evaluation at any time for a minor in his custody as provided in this section. Such medical evaluation or treatment shall be conducted immediately in accordance with state and federal law.

C. If an alternative transportation provider providing transportation of a minor who is the subject of a temporary detention order becomes unable to continue providing transportation of the minor at any time after taking custody of the minor, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the minor and shall transport the minor to the facility of temporary detention. In such cases, (i) a copy of the temporary detention order shall accompany the minor being transported and shall be delivered to and returned by the temporary detention facility in accordance with the provisions of subsection B and (ii) if the alternative transportation provider originally authorized to provide transportation is a person other than the minor's parent, the alternative transportation provider shall notify the minor's parent (a) that the primary law-enforcement agency for the jurisdiction in which he is located has taken custody of the minor and is transporting the minor to the facility of temporary detention and (b) of the name of the law-enforcement officer providing transportation of the minor.

D. In cases in which an alternative facility of temporary detention is identified and the law-enforcement agency or alternative transportation provider identified to provide transportation in accordance with subsection B continues to have custody of the minor, the local law-enforcement agency or alternative transportation provider shall transport the minor to the alternative facility of temporary detention identified by the employee or designee of the local community services board. In cases in which an alternative facility of temporary detention is identified and custody of the minor has been transferred from the law-enforcement agency or alternative transportation provider that provided transportation in accordance with subsection B to the initial facility of temporary detention, the employee or designee of the local community services board shall request, and a magistrate may enter an order specifying, an alternative transportation provider or, if no alternative transportation provider is available, willing, and able to provide transportation in a safe manner, the local law-enforcement agency for the jurisdiction

in which the minor resides or, if the nearest boundary of the jurisdiction in which the minor resides is more than 50 miles from the nearest boundary of the jurisdiction in which the minor is located, the law-enforcement agency of the jurisdiction in which the minor is located, to provide transportation.

E. The magistrate may change the transportation provider specified in a temporary detention order at any time prior to the initiation of transportation of a minor who is the subject of a temporary detention order pursuant to this section. If the designated transportation provider is changed by the magistrate at any time after the temporary detention order has been executed but prior to the initiation of transportation, the transportation provider having custody of the minor shall transfer custody of the minor to the transportation provider subsequently specified to provide transportation. For the purposes of this subsection, "transportation provider" includes both a law-enforcement agency and an alternative transportation provider.

F. A law-enforcement officer may lawfully go or be sent beyond the territorial limits of the county, city, or town in which he serves to any point in the Commonwealth for the purpose of executing any temporary detention order pursuant to this section. Law-enforcement agencies may enter into agreements to facilitate the execution of temporary detention orders and provide transportation.

G. No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

2010, cc. 778, 825; 2015, cc. 297, 308; 2018, c. 20; 2020, cc. 879, 880.

§ 16.1-340.3. Release of minor prior to commitment hearing for involuntary admission.

Prior to a hearing as authorized in § 16.1-341, the judge may release the minor to his parent if it appears from all evidence readily available that the minor does not meet the commitment criteria specified in § 16.1-345. The director of any facility in which the minor is detained may release the minor prior to a hearing as authorized in § 16.1-341 if it appears, based on an evaluation conducted by the psychiatrist or clinical psychologist treating the minor, that the minor would not meet the commitment criteria specified in § 16.1-345 if released.

2010, cc. 778, 825.

§ 16.1-340.4. Involuntary commitment; preadmission screening report.

The juvenile and domestic relations district court shall require a preadmission screening report from the community services board that serves the area where the minor resides or, if impractical, where the minor is located. The report shall be prepared by an employee or designee of the community services board. The report shall be admitted as evidence of the facts stated therein and shall state (i) whether the minor has mental illness and whether, because of mental illness, the minor (a) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats, or (b) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control; (ii) whether

the minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; (iii) whether inpatient treatment is the least restrictive alternative that meets the minor's needs; and (iv) the recommendations for the minor's placement, care, and treatment including, where appropriate, recommendations for mandatory outpatient treatment. The board shall provide the preadmission screening report to the court prior to the hearing, and the report shall be admitted into evidence and made part of the record of the case.

2010, cc. 778, 825.

§ 16.1-341. Involuntary commitment; petition; hearing scheduled; notice and appointment of counsel.

A. A petition for the involuntary commitment of a minor may be filed with the juvenile and domestic relations district court serving the jurisdiction in which the minor is located by a parent or, if the parent is not available or is unable or unwilling to file a petition, by any responsible adult, including the person having custody over a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court. The petition shall include the name and address of the petitioner and the minor and shall set forth in specific terms why the petitioner believes the minor meets the criteria for involuntary commitment specified in § 16.1-345. To the extent available, the petition shall contain the information required by § 16.1-339.1. The petition shall be taken under oath.

If a commitment hearing has been scheduled pursuant to subdivision 3 of subsection C of § 16.1-339, the petition for judicial approval filed by the facility under subsection C of § 16.1-339 shall serve as the petition for involuntary commitment as long as such petition complies in substance with the provisions of this subsection.

B. Upon the filing of a petition for involuntary commitment of a minor, the juvenile and domestic relations district court serving the jurisdiction in which the minor is located shall schedule a hearing which shall occur no sooner than 24 hours and no later than 96 hours from the time the petition was filed or from the issuance of the temporary detention order as provided in § 16.1-340.1, whichever occurs later, or from the time of the hearing held pursuant to subsection C of § 16.1-339 if the commitment hearing has been conducted pursuant to subdivision C 3 of § 16.1-339. If the 96-hour period expires on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the 96 hours shall be extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. The attorney for the minor, the guardian ad litem 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 shall be given notice prior to the hearing.

If the petition is not dismissed or withdrawn, copies of the petition, together with a notice of the hearing, shall be served immediately upon the minor and the minor's parents, if they are not petitioners, by the sheriffs of the jurisdictions in which the minor and his parents are located. The hearing on the petition may proceed if the court determines that copies of the petition and notice of the hearing have

been served on at least one parent and a reasonable effort has been made to serve such copies on both parents. No later than 24 hours before the hearing, the court shall appoint a guardian ad litem for the minor and counsel to represent the minor, unless it has determined that the minor has retained counsel. Upon the request of the minor's counsel, for good cause shown, and after notice to the petitioner and all other persons receiving notice of the hearing, the court may continue the hearing once for a period not to exceed 96 hours.

Any recommendation made by a state mental health facility or state hospital regarding the minor's involuntary commitment may be admissible during the course of the hearing.

1990, c. 975; 1991, c. 159; 1992, c. 539; 2001, c. 837; 2004, c. 283; 2005, c. 346; 2006, c. 401; 2007, cc. 500, 897; 2008, cc. 140, 776, 783, 807, 808; 2009, cc. 455, 555; 2010, cc. 778, 825; 2018, c. 568.

§ 16.1-342. Involuntary commitment; clinical evaluation.

A. Upon the filing of a petition for involuntary commitment, the juvenile and domestic relations district court shall direct the community services board serving the area in which the minor is located to arrange for an evaluation by a qualified evaluator, if one has not already been performed pursuant to subsection B of § 16.1-339. All such evaluations shall be conducted in private. 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. The petitioner, all public agencies, and all providers or programs which have treated or who are treating the minor, shall cooperate with the evaluator and shall promptly deliver, upon request and without charge, all records of treatment or education of the minor. At least 24 hours before the scheduled hearing, the evaluator shall submit to the court a written report which includes the evaluator's opinion regarding whether the minor meets the criteria for involuntary commitment specified in § 16.1-345. A copy of the evaluator's report shall be provided to the minor's guardian ad litem and to the minor's counsel. The evaluator, if not physically present at the hearing, shall be available for questioning during the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 16.1-345.1. When the qualified evaluator attends the hearing in person or by electronic communication, he shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.

B. Any evaluation conducted pursuant to this section shall be a comprehensive evaluation of the minor conducted in-person or, if that is not practicable, by a two-way electronic video and audio communication system as authorized in § 16.1-345.1. Translation or interpreter services shall be provided during the evaluation where necessary. The examination shall consist of (i) a clinical assessment that includes a mental status examination; determination of current use of psychotropic and other medications; a medical and psychiatric history; a substance use, abuse, or dependency determination; and a determination of the likelihood that, because of mental illness, the minor is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition,

self-protection, or self-control; (ii) a substance abuse screening, when indicated; (iii) a risk assessment that includes an evaluation of the likelihood that, because of mental illness, the minor presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats; (iv) for a minor 14 years of age or older, an assessment of the minor's capacity to consent to treatment, including his ability to maintain and communicate choice, understand relevant information, and comprehend the situation and its consequences; (v) if prior to the examination the minor has been temporarily detained pursuant to this article, a review of the temporary detention facility's records for the minor, including the treating physician's evaluation, any collateral information, reports of any laboratory or toxicology tests conducted, and all admission forms and nurses' notes; (vi) a discussion of treatment preferences expressed by the minor or his parents or contained in a document provided by the minor or his parents in support of recovery; (vii) an assessment of alternatives to involuntary inpatient treatment; and (viii) recommendations for the placement, care, and treatment of the minor.

1990, c. 975; 2005, c. 346; 2009, cc. 455, 555; 2010, cc. 778, 825.

§ 16.1-343. Involuntary commitment; duties of attorney for the minor.

As far in advance as practicable after an attorney is appointed to represent a minor under this article, the minor's attorney shall interview the minor; the minor's parent, if available; the petitioner; and the qualified evaluator. He shall interview all other material witnesses, and examine all relevant diagnostic and other reports.

Any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health care provider shall permit the attorney appointed pursuant to this article to inspect and copy, without the consent of the minor or his parents, any records relating to the minor whom the attorney represents.

The obligation of the minor's attorney during the hearing or appeal is to interview witnesses, obtain independent experts when possible, cross-examine adverse witnesses, present witnesses on behalf of the minor, articulate the wishes of the minor, and otherwise fully represent the minor in the proceeding. Counsel appointed by the court shall be compensated in an amount not to exceed $100.

1990, c. 975; 1993, c. 344; 2004, cc. 66, 1014; 2008, c. 807; 2010, cc. 778, 825.

§ 16.1-344. Involuntary commitment; hearing.

A. The court shall summon to the hearing all material witnesses requested by either the minor or the petitioner. All testimony shall be under oath. The rules of evidence shall apply. The petitioner, minor and, with leave of court for good cause shown, any other person shall be given the opportunity to present evidence and cross-examine witnesses. The hearing shall be closed to the public unless the minor and petitioner request that it be open.

B. At the commencement of the hearing involving a minor 14 years of age or older, the court shall inform the minor whose involuntary commitment is being sought of his right to be voluntarily admitted for inpatient treatment as provided for in § 16.1-338 and shall afford the minor an opportunity for

voluntary admission, provided that the minor's parent consents to such voluntary admission. The court shall advise the minor whose involuntary commitment is being sought that if the minor chooses to be voluntarily admitted pursuant to § 16.1-338, such minor will be prohibited from possessing, purchasing, or transporting a firearm pursuant to § 18.2-308.1:3. In determining whether a minor is capable of consenting to voluntary admission, the court may consider evidence regarding the minor's past compliance or noncompliance with treatment.

C. An employee or a designee of the community services board that arranged for the evaluation of the minor shall attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 16.1-345.1. If (i) the minor does not reside in the jurisdiction served by the juvenile and domestic relations district court that conducts the hearing and (ii) the minor is being considered for mandatory outpatient treatment pursuant to § 16.1-345.2, an employee or designee of the community services board serving the area where the minor resides shall also attend the hearing in person or, if physical attendance is not practicable, shall participate in the hearing through a two-way electronic video and audio or telephonic communication system as authorized in § 16.1-345.1. The employee or designee of the community services board serving the area where the minor resides may, instead of attending the hearing, make arrangements with the community services board that arranged for the evaluation of the minor to present on its behalf the recommendations for a specific course of treatment and programs for the provision of mandatory outpatient treatment required by subsection C of § 16.1-345.2 and the initial mandatory outpatient treatment plan required by subsection D of § 16.1-345.2. When a community services board attends the hearing on behalf of the community services board serving the area where the minor resides, the attending community services board shall inform the community services board serving the area where the minor resides of the disposition of the matter upon the conclusion of the hearing. In addition, the attending community services board shall transmit the disposition through certified mail, personal delivery, facsimile with return receipt acknowledged, or other electronic means to the community services board serving the area where the minor resides. Any employee or designee of the community services board attending or participating in the hearing shall not be excluded from the hearing pursuant to an order of sequestration of witnesses.

At least 12 hours prior to the hearing, the court shall provide the time and location of the hearing to the community services board that arranged for the evaluation of the minor. If the community services board will be present by telephonic means, the court shall provide the telephone number to the board.

1990, c. 975; 1992, c. 539; 2009, cc. 455, 555; 2010, cc. 778, 825; 2018, c. 846.

§ 16.1-345. Involuntary commitment; criteria.

After observing the minor and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any qualified evaluator's report, (v) any medical records available, (vi) the preadmission screening report, and (vii) any other evidence that may have been admit-

ted, the court shall order the involuntary commitment of the minor to a mental health facility for treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment; and

3. If the court finds that inpatient treatment is not the least restrictive treatment, the court shall consider entering an order for mandatory outpatient treatment pursuant to § 16.1-345.2.

Upon the expiration of an order for involuntary commitment, the minor shall be released unless he is involuntarily admitted by further petition and order of a court, which shall be for a period not to exceed 90 days from the date of the subsequent court order, or the minor or his parent rescinds the objection to inpatient treatment and consents to admission pursuant to § 16.1-338 or subsection D of § 16.1-339 or the minor is ordered to mandatory outpatient treatment pursuant to § 16.1-345.2.

A minor who has been hospitalized while properly detained by a juvenile and domestic relations district court shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice by the sheriff serving the jurisdiction where the minor was detained within 24 hours following completion of a period of inpatient treatment, unless the court having jurisdiction over the case orders that the minor be released from custody. However, such a minor shall not be eligible for mandatory outpatient treatment.

In conducting an evaluation of a minor who has been properly detained, if the evaluator finds, irrespective of the fact that the minor has been detained, that the minor meets the criteria for involuntary commitment in this section, the evaluator shall recommend that the minor meets the criteria for involuntary commitment.

If the parent or parents with whom the minor resides are not willing to approve the proposed commitment, the court shall order inpatient treatment only if it finds, in addition to the criteria specified in this section, that such treatment is necessary to protect the minor's life, health, safety, or normal development. If a special justice believes that issuance of a removal order or protective order may be in the child's best interest, the special justice shall report the matter to the local department of social services for the county or city where the minor resides.

Upon finding that the best interests of the minor so require, the court may enter an order directing either or both of the minor's parents to comply with reasonable conditions relating to the minor's treatment.

If the minor is committed to inpatient treatment, such placement shall be in a mental health facility for inpatient treatment designated by the community services board which serves the political subdivision in which the minor was evaluated pursuant to § 16.1-342. If the community services board does not provide a placement recommendation at the hearing, the minor shall be placed in a mental health facility designated by the Commissioner of Behavioral Health and Developmental Services.

When a minor has been involuntarily committed pursuant to this section, the judge shall determine, after consideration of information provided by the minor's treating mental health professional and any involved community services board staff regarding the minor's dangerousness, whether transportation shall be provided by the sheriff or may be provided by an alternative transportation provider, including a parent, family member, or friend of the minor, a representative of the community services board, a representative of the facility at which the minor was detained pursuant to a temporary detention order, or other alternative transportation provider with personnel trained to provide transportation in a safe manner. If the judge determines that transportation may be provided by an alternative transportation provider, the judge may consult with the proposed alternative transportation provider either in person or via two-way electronic video and audio or telephone communication system to determine whether the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner. If the judge finds that the proposed alternative transportation provider is available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner, the judge may order transportation by the proposed alternative transportation provider. In all other cases, the judge shall order transportation by the sheriff of the jurisdiction where the minor is a resident unless the sheriff's office of that jurisdiction is located more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place. In cases where the sheriff of the jurisdiction in which the minor is a resident is more than 100 road miles from the nearest boundary of the jurisdiction in which the proceedings took place, it shall be the responsibility of the sheriff of the latter jurisdiction to transport the minor.

If the judge determines that the minor requires transportation by the sheriff, the sheriff, as specified in this section shall transport the minor to the proper facility. In no event shall transport commence later than six hours after notification to the sheriff or alternative transportation provider of the judge's order.

If an alternative transportation provider providing transportation of a minor becomes unable to continue providing transportation of the minor at any time after taking custody of the minor, the primary law-enforcement agency for the jurisdiction in which the alternative transportation provider is located at the time he becomes unable to continue providing transportation shall take custody of the minor and shall transport the minor to the proper facility. In such cases, if the alternative transportation provider originally authorized to provide transportation is a person other than the minor's parent, the alternative transportation provider shall notify the minor's parent (a) that the primary law-enforcement agency for the jurisdiction in which he is located has taken custody of the minor and is transporting the minor to

the facility of temporary detention and (b) of the name of the law-enforcement officer providing transportation of the minor.

No person who provides alternative transportation pursuant to this section shall be liable to the person being transported for any civil damages for ordinary negligence in acts or omissions that result from providing such alternative transportation.

1990, c. 975; 1992, c. 539; 2005, c. 346; 2009, cc. 112, 455, 555, 697, 813, 840; 2010, cc. 778, 825; 2015, cc. 297, 308; 2020, cc. 879, 880.

§ 16.1-345.1. Use of electronic communication.

A. Petitions and orders for emergency custody, temporary detention, and involuntary commitment of minors pursuant to this article may be filed, issued, served, or executed by electronic means, with or without the use of two-way electronic video and audio communication, and returned in the same manner with the same force, effect, and authority as an original document. All signatures thereon shall be treated as original signatures.

B. Any judge may conduct proceedings pursuant to this article using any two-way electronic video and audio communication system to provide for the appearance of any parties and witnesses. Any two-way electronic video and audio communication system used to conduct a proceeding shall meet the standards set forth in subsection B of § 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.

2005, c. 51; 2007, cc. 500, 897; 2009, cc. 455, 555; 2010, cc. 778, 825.

§ 16.1-345.2. Mandatory outpatient treatment; criteria; orders.

A. After observing the minor and considering (i) the recommendations of any treating or examining physician or psychologist licensed in Virginia, if available, (ii) any past actions of the minor, (iii) any past mental health treatment of the minor, (iv) any evaluation of the minor, (v) any medical records available, (vi) the preadmission screening report, and (vii) any other relevant evidence that may have been admitted, the court shall order that the minor be admitted involuntarily to mandatory outpatient treatment for a period not to exceed 90 days if it finds, by clear and convincing evidence, that:

1. Because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control;

2. The minor is in need of compulsory treatment for a mental illness and is reasonably likely to benefit from the proposed treatment;

3. Less restrictive alternatives to involuntary inpatient treatment that would offer an opportunity for improvement of his condition have been investigated and are determined to be appropriate;

4. The minor, if 14 years of age or older, and his parents (i) have sufficient capacity to understand the stipulations of the minor's treatment, (ii) have expressed an interest in the minor's living in the community and have agreed to abide by the minor's treatment plan, and (iii) are deemed to have the capacity to comply with the treatment plan and understand and adhere to conditions and requirements of the treatment and services; and

5. The ordered treatment can be delivered on an outpatient basis by the community services board or a designated provider.

Less restrictive alternatives shall not be determined to be appropriate unless the services are actually available in the community and providers of the services have actually agreed to deliver the services.

B. Mandatory outpatient treatment may include day treatment in a hospital, night treatment in a hospital, or other appropriate course of treatment as may be necessary to meet the needs of the minor. The community services board serving the area in which the minor resides shall recommend a specific course of treatment and programs for the provision of mandatory outpatient treatment. Upon expiration of an order for mandatory outpatient treatment, the minor shall be released from the requirements of the order unless the order is continued in accordance with § 16.1-345.5.

C. Any order for mandatory outpatient treatment shall include an initial mandatory outpatient treatment plan developed by the community services board serving the area in which the minor resides. The plan shall, at a minimum, (i) identify the specific services to be provided, (ii) identify the provider who has agreed to provide each service, (iii) describe the arrangements made for the initial in-person appointment or contact with each service provider, and (iv) include any other relevant information that may be available regarding the mandatory outpatient treatment ordered. The order shall require the community services board to monitor the implementation of the mandatory outpatient treatment plan and report any material noncompliance to the court.

D. No later than five business days after an order for mandatory outpatient treatment has been entered pursuant to this section, the community services board that is responsible for monitoring compliance with the order shall file a comprehensive mandatory outpatient treatment plan. The comprehensive mandatory outpatient treatment plan shall (i) identify the specific type, amount, duration, and frequency of each service to be provided to the minor, (ii) identify the provider that has agreed to provide each service included in the plan, (iii) certify that the services are the most appropriate and least restrictive treatment available for the minor, (iv) certify that each provider has complied and continues to comply with applicable provisions of the Department of Behavioral Health and Developmental Services' licensing regulations, (v) be developed with the fullest involvement and participation of the minor and his parents and reflect their preferences to the greatest extent possible to support the minor's recovery and self-determination, (vi) specify the particular conditions with which the minor shall be required to comply, and (vii) describe how the community services board shall monitor the minor's compliance with the plan and report any material noncompliance with the plan. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and

participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The community services board shall submit the comprehensive mandatory outpatient treatment plan to the court for approval. Upon approval by the court, the comprehensive mandatory outpatient treatment plan shall be filed with the court and incorporated into the order of mandatory outpatient treatment. Any subsequent substantive modifications to the plan shall be filed with the court for review and attached to any order for mandatory outpatient treatment.

E. If the community services board responsible for developing the comprehensive mandatory outpatient treatment plan determines that the services necessary for the treatment of the minor's mental illness are not available or cannot be provided to the minor in accordance with the order for mandatory outpatient treatment, it shall notify the court within five business days of the entry of the order for mandatory outpatient treatment. Within five business days of receiving such notice, the judge, after notice to the minor, the minor's attorney, and the community services board responsible for developing the comprehensive mandatory outpatient treatment plan, shall hold a hearing pursuant to § 16.1-345.4.

F. Upon entry of any order for mandatory outpatient treatment, the clerk of the court shall provide a copy of the order to the minor who is the subject of the order, his parents, his attorney, his guardian ad litem, and the community services board required to monitor his compliance with the plan. The community services board shall acknowledge receipt of the order to the clerk of the court on a form established by the Office of the Executive Secretary of the Supreme Court and provided by the court for this purpose.

G. After entry of any order for mandatory outpatient treatment if the court that entered the order is not the juvenile and domestic relations district court for the jurisdiction in which the minor resides, it shall transfer jurisdiction of the case to the court where the minor resides.

2009, cc. 455, 555; 2010, cc. 778, 825.

§ 16.1-345.3. Monitoring mandatory outpatient treatment; motion for review.

A. The community services board where the minor resides shall monitor the minor's compliance with the mandatory outpatient treatment plan ordered by the court pursuant to § 16.1-345.2. Monitoring compliance shall include (i) contacting the service providers to determine if the minor is complying with the mandatory outpatient treatment order and (ii) notifying the court of the minor's material noncompliance with the mandatory outpatient treatment order. Providers of services identified in the plan shall report any material noncompliance to the community services board.

B. If the community services board determines that the minor materially failed to comply with the order, it shall file with the juvenile and domestic relations district court for the jurisdiction in which the minor resides a motion for review of the mandatory outpatient treatment order as provided in § 16.1-345.4. The community services board shall file the motion for review of the mandatory outpatient treatment order within three business days of making that determination, or within 24 hours if the minor is being detained under a temporary detention order, and shall recommend an appropriate disposition. Copies of the motion for review shall be sent to the minor, his parents, his attorney, and his guardian ad litem.

C. If the community services board determines that the minor is not materially complying with the mandatory outpatient treatment order or for any other reason, and that because of mental illness, the minor (i) presents a serious danger to himself or others to the extent that severe or irremediable injury is likely to result, as evidenced by recent acts or threats or (ii) is experiencing a serious deterioration of his ability to care for himself in a developmentally age-appropriate manner, as evidenced by delusionary thinking or by a significant impairment of functioning in hydration, nutrition, self-protection, or self-control, it shall immediately request that the magistrate issue an emergency custody order pursuant to § 16.1-340 or a temporary detention order pursuant to § 16.1-340.1.

D. If the community services board determines at any time prior to the expiration of the mandatory outpatient treatment order that the minor has complied with the order and that continued mandatory outpatient treatment is no longer necessary, it shall file a motion to review the order with the juvenile and domestic relations district court for the jurisdiction in which the minor resides. The court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 16.1-345.4.

2009, cc. 455, 555; 2010, cc. 778, 825.

§ 16.1-345.4. Court review of mandatory outpatient treatment plan.

A. The juvenile and domestic relations district court judge shall hold a hearing within 15 days after receiving the motion for review of the mandatory outpatient treatment plan; however, if the fifteenth day is a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the hearing shall be held on the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed. If the minor is being detained under a temporary detention order, the hearing shall be scheduled within the same time frame provided for a commitment hearing under § 16.1-341. The clerk shall provide notice of the hearing to the minor, his parents, the community services board, all treatment providers listed in the comprehensive mandatory outpatient treatment order, and the original petitioner for the minor's involuntary treatment. If the minor is not represented by counsel, the judge shall appoint an attorney to represent the minor in this hearing and any subsequent hearings under § 16.1-345.5, giving consideration to appointing the attorney who represented the minor at the proceeding that resulted in the issuance of the mandatory outpatient treatment order. The judge shall also appoint a guardian ad litem for the minor. The community services board shall offer to arrange the minor's transportation to the hearing if the minor is not detained and has no other source of transportation.

B. If requested by the minor's parents, the community services board, a treatment provider listed in the comprehensive mandatory outpatient treatment plan, or the original petitioner for the minor's involuntary treatment, the juvenile and domestic relations district court judge may order an evaluation and appoint a qualified evaluator in accordance with § 16.1-342 who shall personally examine the minor and certify to the court whether or not he has probable cause to believe that the minor meets the criteria for involuntary inpatient treatment or mandatory outpatient treatment as specified in § 16.1-345 and subsection A of § 16.1-345.2. The evaluator's report may be admitted into evidence without the appearance of the evaluator at the hearing if not objected to by the minor or his attorney. If the minor is not detained in an inpatient facility, the community services board shall arrange for the minor to be

examined at a convenient location and time. The community services board shall offer to arrange for the minor's transportation to the examination, if the minor has no other source of transportation. If the minor refuses or fails to appear, the community services board shall notify the court, and the court shall issue a mandatory examination order and a civil show cause summons. The return date for the civil show cause summons shall be set on a date prior to the review hearing scheduled pursuant to subsection A, and the examination of the minor shall be conducted immediately after the hearing thereon, but in no event shall the period for the examination exceed eight hours.

C. If the minor fails to appear for the hearing, the juvenile and domestic relations district court judge shall, after consideration of any evidence from the minor, from his parents, from the community services board, or from any treatment provider identified in the mandatory outpatient treatment plan regarding why the minor failed to appear at the hearing, either (i) reschedule the hearing pursuant to subsection A, (ii) issue an emergency custody order pursuant to § 16.1-340, or (iii) issue a temporary detention order pursuant to § 16.1-340.1.

D. After hearing the evidence regarding the minor's material noncompliance with the mandatory outpatient treatment order and the minor's current condition, and any other relevant information referenced in § 16.1-345 and subsection A of § 16.1-345.2, the juvenile and domestic relations district court judge may make one of the following dispositions:

1. Upon finding by clear and convincing evidence that the minor meets the criteria for involuntary admission and treatment specified in § 16.1-345, the judge shall order the minor's involuntary admission to a facility designated by the community services board for a period of treatment not to exceed 30 days;

2. Upon finding that the minor continues to meet the criteria for mandatory outpatient treatment specified in subsection A of § 16.1-345.2, and that a continued period of mandatory outpatient treatment appears warranted, the judge may renew the order for mandatory outpatient treatment, making any necessary modifications that are acceptable to the community services board or treatment provider responsible for the minor's treatment. In determining the appropriateness of outpatient treatment, the court may consider the minor's material noncompliance with the previous mandatory treatment order; or

3. Upon finding that neither of the above dispositions is appropriate, the judge may rescind the order for mandatory outpatient treatment.

Upon entry of an order for involuntary inpatient admission, transportation shall be provided in accordance with § 16.1-345.

E. For the purposes of this section, "juvenile and domestic relations district court judge" shall not include a special justice as authorized by § 37.2-803.

2009, cc. 455, 555; 2010, cc. 778, 825; 2014, cc. 691, 761.

§ 16.1-345.5. Continuation of mandatory outpatient treatment order.

A. At any time within 30 days prior to the expiration of a mandatory outpatient treatment order, the community services board that is required to monitor the minor's compliance with the order may file with the juvenile and domestic relations district court for the jurisdiction in which the minor resides a motion for review to continue the order for a period not to exceed 90 days.

B. The court shall grant the motion for review and enter an appropriate order without further hearing if it is joined by (i) the minor's parents and the minor if he is 14 years of age or older, or (ii) the minor's parents if the minor is younger than 14 years of age. If the minor's parents and the minor, if necessary, do not join the motion, the court shall schedule a hearing and provide notice of the hearing in accordance with subsection A of § 16.1-345.4.

C. Upon receipt of the motion for review, the court shall appoint a qualified evaluator who shall personally examine the minor pursuant to § 16.1-342. The community services board required to monitor the minor's compliance with the mandatory outpatient treatment order shall provide a preadmission screening report as required in § 16.1-340.4.

D. After observing the minor, reviewing the preadmission screening report, and considering the appointed qualified evaluator's report and any other relevant evidence referenced in § 16.1-345 and subsection A of § 16.1-345.2, the court may make one of the dispositions specified in subsection D of § 16.1-345.4. If the court finds that a continued period of mandatory outpatient treatment is warranted, it may continue the order for a period not to exceed 90 days. Any order of mandatory outpatient treatment that is in effect at the time a motion for review for the continuation of the order is filed shall remain in effect until the court enters a subsequent order in the case.

E. For the purposes of this section, the "court" shall not include a special justice as authorized in § 37.2-803.

2009, cc. 455, 555; 2010, cc. 778, 825.

§ 16.1-345.6. Appeal of final order.

A. The minor shall have the right to appeal any final order committing the minor or ordering the minor to mandatory outpatient treatment to the circuit court in the jurisdiction where the minor was committed, hospitalized pursuant to the commitment order, or ordered to mandatory outpatient treatment. Venue shall be in the circuit court having jurisdiction within the territory of the court that issued the final order. The circuit court may transfer the case upon a finding that another forum is more convenient. The appeal shall be heard de novo by the circuit court in accordance with the provisions set forth in this article. Any order of the circuit court shall not extend the period of commitment or mandatory outpatient treatment set forth in the order appealed from.

B. Notice of an appeal shall be filed within 10 days from the date of the order. The appeal shall be given priority over all other pending matters before the circuit court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial. A petition for or the pendency of an appeal shall not suspend any order unless so ordered by the court, however a minor may be released after a petition for or during the pendency of an appeal pursuant to

subsection B of § 16.1-346. The clerk of the court from which the appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the person who initiated the petition under this article in accordance with procedures set forth in § 16.1-112.

C. The juvenile and domestic relations district court shall appoint an attorney and a guardian ad litem to represent any minor desiring to appeal who is not already represented.

2010, cc. 778, 825.

§ 16.1-346. Treatment plans; periodic review of status.

A. Within 10 days of commitment ordered under § 16.1-345, the director of the facility to which the minor was committed shall ensure that an individualized plan of treatment has been prepared by the provider responsible for the minor's treatment and, if applicable, has been communicated to the parent. The minor shall be involved in the preparation of the plan to the maximum feasible extent consistent with his ability to understand and participate, and the minor's family shall be involved to the maximum extent consistent with the minor's treatment needs. The plan shall include a preliminary plan for placement and aftercare upon completion of inpatient treatment and shall include specific behavioral and emotional goals against which the success of treatment may be measured. A copy of the plan shall be provided to the minor, his parents, and, upon request, to his attorney and his guardian ad litem.

B. A minor committed to inpatient treatment shall be discharged from the facility when he no longer meets the commitment criteria as determined by appropriate hospital medical staff review.

1990, c. 975; 1991, c. 159; 2010, cc. 778, 825.

§ 16.1-346.1. Discharge plan.

Prior to discharge of any minor admitted to inpatient treatment, including a minor in detention or shelter care pursuant to an order of a juvenile and domestic relations district court, a discharge plan shall be formulated, provided and explained to the minor, and copies thereof shall be sent (i) to the minor's parents or (ii) if the minor is in the custody of the local department of social services, to the department's director or the director's designee or (iii) to the minor's parents and (a) if the juvenile is to be housed in a detention home upon discharge, to the court in which the petition has been filed and the facility superintendent, or (b) if the minor is in custody of the local department of social services, to the department. A copy of the plan shall also be provided, upon request, to the minor's attorney and guardian ad litem. If the minor was admitted to a state facility, the discharge plan shall be contained in a uniform discharge document developed by the Department of Behavioral Health and Developmental Services. The plan shall, at a minimum, (i) specify the services required by the released minor in the community to meet his needs for treatment, housing, nutrition, physical care, and safety; (ii) specify any income subsidies for which the minor is eligible; (iii) identify all local and state agencies which will be involved in providing treatment and support to the minor; and (iv) specify services which would be appropriate for the minor's treatment and support in the community but which are currently

unavailable. A minor in detention or shelter care prior to admission to inpatient treatment shall be returned to the detention home, shelter care, or other facility approved by the Department of Juvenile Justice within 24 hours by the sheriff serving the jurisdiction where the minor was detained upon release from the treating facility, unless the juvenile and domestic relations district court having jurisdiction over the case has provided written authorization for release of the minor, prior to the scheduled date of release.

1991, c. 159; 1995, c. 304; 2005, cc. 346, 716; 2010, cc. 778, 825.

§ 16.1-347. Fees and expenses for qualified evaluators.

Every qualified evaluator appointed by the court to conduct an evaluation pursuant to this article who is not regularly employed by the Commonwealth shall be compensated for fees and expenses as provided in § 37.2-804.

1990, c. 975; 2010, cc. 778, 825.

§ 16.1-348. Availability of judge.

The chief judge of every juvenile and domestic relations district court shall establish and require that a judge be available seven days a week, 24 hours a day, for the purpose of performing the duties established by this article. Such judge shall have the authority to perform the duties established by this article.

1990, c. 975; 2005, c. 716; 2007, cc. 500, 897.

Article 17 - Standby Guardianship

§ 16.1-349. Definitions.

"Attending physician" means the physician who has primary responsibility for the treatment and care of a qualified parent.

"Designation" means a writing which (i) is voluntarily executed in conformance with the requirements of § 16.1-351 and signed by a parent and (ii) names a person to act as standby guardian.

"Determination of debilitation" means a written determination made by an attending physician that a qualified parent is chronically and substantially unable to care for a minor child as a result of a debilitating illness, disease or injury. Such a determination shall include the physician's medical opinion to a reasonable degree of medical certainty, regarding the nature, cause, extent and probable duration of the parent's debilitating condition.

"Determination of incompetence" means a written determination made by the attending physician that to a reasonable degree of medical certainty a qualified parent is chronically and substantially unable to understand the nature and consequences of decisions concerning the care of a minor child as a result of a mental or organic impairment and is consequently unable to care for the child. Such a determination shall include the physician's medical opinion, to a reasonable degree of medical certainty, regarding the nature, cause, extent and probable duration of the parent's incompetence.

"Parent" means a genetic or adoptive parent or parent determined in accordance with the standards set forth in § 20-49.1 or § 20-158, and includes a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

"Qualified parent" means a parent who has (i) been diagnosed, as evidenced in writing, by a licensed physician to be afflicted with a progressive or chronic condition caused by injury, disease or illness from which, to a reasonable degree of medical probability, the patient cannot recover or (ii) reason to anticipate possible detention, incarceration, or deportation connected to an immigration action.

"Standby guardian" means a person who, in accordance with this article, is designated in writing or approved by the court to temporarily assume the duties of guardian of the person or guardian of the property, or both, of a minor child on behalf of or in conjunction with a qualified parent upon the occurrence of a triggering event. The term shall be so construed as to enable the parent to plan for the future care of a child, without terminating parental or legal rights, and to give the standby guardian the authority to act in a manner consistent with the known wishes of a qualified parent regarding the care, custody and support of the minor child.

"Triggering event" means the event upon the occurrence of which the standby guardian may be authorized to act. The triggering event shall be specified in the court order or written designation and shall be the earlier of a determination of incompetence or the death of the qualified parent. However, in the case of a standby guardian judicially approved pursuant to § 16.1-350, the triggering event may also be specified as the qualified parent's written consent to the commencement of the standby guardian's authority. In the case of a standby guardian designated pursuant to § 16.1-351 or 16.1-352, the triggering event may also be specified as (i) a determination of debilitation of the qualified parent or evidence of the detention, incarceration, or deportation of the qualified parent connected to an immigration action or (ii) that parent's written consent to the commencement of the designated standby guardian's authority.

1998, c. 829; 2021, Sp. Sess. I, c. 241.

§ 16.1-350. Petition for court approval of standby guardian.

A. Upon petition of any person, the juvenile court of the jurisdiction in which a child resides may approve a person as standby guardian for a child of a qualified parent upon the occurrence of a specified triggering event. If requested in the petition, the court may also approve an alternate standby guardian identified by the petitioner, to act in the event that at any time after approval pursuant to this section the standby guardian is unable or unwilling to assume the responsibilities of the standby guardianship.

B. The petition shall state:

1. The name and address of the petitioner and his relationship to the child and the name and address of the child's qualified parent, and the name and address of any other parent of the child whose identity and whereabouts are known to the petitioner or can reasonably be ascertained;

2. The name, address and birthdate of the child;

3. The nature of the proposed triggering event, including when a qualified parent's consent would be effective in those cases where such consent is chosen as the triggering event;

4. Whether a determination of incompetence or debilitation has been made and, if so, when and by whom;

5. Whether there is a significant risk that the qualified parent will imminently become physically or mentally incapable of caring for the child or die as the result of a progressive chronic condition or illness, or be detained, incarcerated, or deported in connection with an immigration action; however, a petitioner shall not be required to submit documentation of a parent's medical or immigration status with the petition;

6. The name and address of the person proposed as standby guardian and any alternate and whether the petition requests that such person be given authority as a guardian of the person or guardian of the property of the minor, or both;

7. A statement of any known reasons as to why the child's other parent is not assuming or should not assume the responsibilities of a standby guardian;

8. Whether there is any prior judicial history regarding custody of the child or any pending litigation regarding custody of the child; and

9. The name and address of the attending physician.

C. Upon the filing of a petition, notice of the filing shall promptly be given to each parent of the child whose identity and whereabouts are known to the petitioner. The court shall direct the issuance of summonses to the child, if the child is 12 or more years of age and the proposed standby guardian and alternate, if any, and such other persons as appear to the court to be proper or necessary parties to the proceedings including the child's parents, guardian, legal custodian or other person standing in loco parentis, if the identity and whereabouts of such persons are known. Service of the summons shall be made pursuant to § 16.1-264.

An order approving the standby guardian shall not be entered without a hearing if there is another known parent, stepparents, adult siblings, or other adult related to the child by blood, marriage, or adoption who requests a hearing within 10 days of the date that notice of the filing was sent or if there is other litigation pending regarding custody of the child.

Prior to any hearing on the petition, the court may appoint a discreet and competent attorney at law as guardian ad litem to represent the child pursuant to § 16.1-266.1. In the case of a petition filed by anyone other than a parent of the child, the court shall appoint a guardian ad litem. The qualified parent shall not be required to appear in court if the parent is medically unable to appear, except upon motion for good cause shown.

1998, c. 829; 2021, Sp. Sess. I, c. 241.

§ 16.1-351. Court order approving standby guardianship; authority; when effective.

Upon consideration of the factors set out in § 20-124.3 and finding that (i) the child's parent is a qualified parent and (ii) appointment of a standby guardian is in the best interest of the child, the court shall appoint a proper and suitable person as standby guardian and, if requested, a proper and suitable person as alternate standby guardian. However, when a petition is filed by a person other than a parent having custody of the child, the standby guardian shall be appointed only with the consent of the qualified parent unless the court finds that such consent cannot be given for medical reasons.

The order shall specify the triggering event and shall provide that the authority of the standby guardian is effective (a) upon receipt by the standby guardian of (1) a determination of incompetence of the parent, (2) a certificate of death of the parent, (3) evidence of the detention, incarceration, or deportation of the parent connected to an immigration action, or (4) the earlier of clause (1), (2), or (3) or (b) if so requested in the petition, upon receipt by the standby guardian of a written consent of the qualified parent and filing of the consent with the court. The written consent shall be executed after the entry of the court order and signed by the qualified parent, or by another in his presence and on his behalf.

As soon as practicable after entry of the order, a copy shall be served on the standby guardian.

A standby guardian shall have the powers and duties of a guardian of the person and a guardian of the property of a minor, unless otherwise specified in the order.

The standby guardian shall file with the court, as soon as practicable but in no event later than 30 days following a parent's death, determination of incompetence, consent, or detention, incarceration, or deportation connected to an immigration action, a copy of the certificate of death, determination of incompetence, consent, or evidence of such detention, incarceration, or deportation of the qualified parent upon which his authority is based. Failure to file within the time specified shall be grounds for the court to rescind the authority of the standby guardian sua sponte or upon petition of any person but all acts undertaken by the standby guardian on behalf of and in the interests of the child shall be valid and enforceable.

1998, c. 829; 2021, Sp. Sess. I, c. 241.

§ 16.1-352. Written designation of a standby guardian by a parent; commencement of authority; court approval required.

A. A parent may execute a written designation of a standby guardian at any time. The written designation shall state:

1. The name, address and birthdate of the child affected;

2. The triggering event; and

3. The name and address of the person designated as standby guardian or alternate.

The written designation shall be signed by the parent. Another adult may sign the written designation on behalf of the parent if the parent is physically unable to do so, provided the designation is signed at the express request of the parent and in the presence of the parent. The designated standby guardian

or alternate may not sign on behalf of the parent. The signed designation shall be delivered to the standby guardian and any alternate named as soon as practicable.

B. Following such delivery of the designation, the authority of a standby guardian to act for a qualified parent shall commence upon the occurrence of the specified triggering event and receipt by him of (i) a determination of incompetence; (ii) a certificate of death of the parent; (iii) evidence of the detention, incarceration, or deportation of the parent connected to an immigration action; or (iv) a determination of debilitation and the qualified parent's written consent to such commencement, signed by the parent or another on his behalf and at his direction as provided in subsection A for the designation.

C. A standby guardian under a designation shall have the authority of a guardian of the person and a guardian of the property of the child, unless otherwise specified in the designation.

D. A designated standby guardian or alternate shall file a petition for approval as standby guardian. The petition shall be filed as soon as practicable after the occurrence of the triggering event but in no event later than 30 days after the date of the commencement of his authority. The authority of the standby guardian shall cease upon his failure to so file, but shall recommence upon such filing. The petition shall be accompanied by a copy of the designation and any determinations of incapacity or debilitation or a certificate of death.

The provisions of subsection C of § 16.1-350 shall apply to a petition filed pursuant to this section. The court shall enter an order approving the designated guardian as standby guardian upon finding that:

1. The person was duly designated as standby guardian pursuant to this section and the designation has not been revoked;

2. A determination of incompetence was made; a determination of debilitation was made and the parent consented to commencement of the standby guardian's authority; the parent has died as evidenced by a death certificate; or the parent has been detained, incarcerated, or deported in connection with an immigration action;

3. The best interests of the child will be served by approval of the standby guardian; and

4. If the petition is by an alternate, that the designated standby guardian is unwilling or unable to serve.

1998, c. 829; 2021, Sp. Sess. I, c. 241.

§ 16.1-353. Further proceedings to determine permanent guardianship, custody.

A. If the triggering event was death of the qualified parent, within 90 days following the occurrence of the triggering event or, if later, commencement of the standby guardian's authority, the standby guardian shall (i) petition for appointment of a guardian for the child as otherwise provided by law or (ii) initiate other proceedings to determine custody of the child pursuant to Chapter 6.1 (§ 20-124.1 et seq.) of Title 20, or both.

B. In all other cases a standby guardian shall promptly after occurrence of the triggering event initiate such proceedings to determine permanent custody, absent objection by the qualified parent.

The petition shall be accompanied by:

1. The court order approving or written designation of a standby guardian; and

2. The attending physician's written determination of incompetence or debilitation; a verification of death; or evidence of the parent's detention, incarceration, or deportation in connection with an immigration action.

1998, c. 829; 2021, Sp. Sess. I, c. 241.

§ 16.1-354. Revocation, refusal, termination of standby guardianship.

A. The authority of a standby guardian approved by the court may be revoked by the qualified parent by his filing a notice of revocation with the court. The notice of revocation shall identify the standby guardian or alternate standby guardian to which the revocation will apply. A copy of the revocation shall also be delivered to the standby guardian whose authority is revoked and any alternate standby guardian who may then be authorized to act.

At any time following his approval by the court, a standby guardian approved by the court may decline to serve by filing a written statement of refusal with the court and having the statement personally served on the qualified parent and any alternate standby guardian who may then be authorized to act.

B. When a written designation has been executed, but is not yet effective because the triggering event has not yet occurred, the parent may revoke or the prospective standby guardian may refuse the designation by notifying the other party in writing.

A written designation may also be revoked by the execution of a subsequent inconsistent designation.

C. When a standby guardian's authority is effective upon debilitation or incompetence of the qualified parent, the standby guardian's authority to act on behalf of the parent continues even though the parent is restored to health unless the qualified parent notifies the guardian and, if appropriate, the court, in writing, that the standby guardian's authority is revoked upon such restoration or otherwise.

If at any time the court finds that the parent no longer meets the definition of "qualified parent," the court shall rescind its approval of the standby guardian.

1998, c. 829.

§ 16.1-355. Review of standby guardianship.

A child's parent, stepparent, adult sibling or any adult related to the child by blood, marriage or adoption may petition the court which approved the standby guardian at any time following such approval and prior to any termination of the standby guardianship for review of whether continuation of the standby guardianship is in the best interests of the child. Notice of the filing of a petition shall promptly be given to the standby guardian, the child, if the child is twelve or more years of age, and each parent of the child whose identity and whereabouts are known or could reasonably be ascertained.

1998, c. 829.

Article 18 - Juvenile Competency

§ 16.1-356. Raising question of competency to stand trial; evaluation and determination of competency.

A. If, at any time after the attorney for the juvenile has been retained or appointed pursuant to a delinquency proceeding and before the end of trial, the court finds, sua sponte or upon hearing evidence or representations of counsel for the juvenile or the attorney for the Commonwealth, that 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, licensed clinical social worker, or licensed marriage and family therapist, who is qualified by training and experience in the forensic evaluation of juveniles.

The Commissioner of Behavioral Health and Developmental Services shall approve the training and qualifications for individuals authorized to conduct juvenile competency evaluations and provide restoration services to juveniles pursuant to this article. The Commissioner shall also provide all juvenile courts with a list of guidelines for the court to use in the determination of qualifying individuals as experts in matters relating to juvenile competency and restoration.

B. The evaluation shall be performed on an outpatient basis at a community services board or behavioral health authority, juvenile detention home, or juvenile justice facility unless the court specifically finds that (i) the results of the outpatient competency evaluation indicate that hospitalization of the juvenile for evaluation of competency is necessary or (ii) the juvenile is currently hospitalized in a psychiatric hospital. If one of these findings is made, the court, under authority of this subsection, may order the juvenile sent to a hospital designated by the Commissioner of Behavioral Health and Developmental Services as appropriate for the evaluation of juveniles against whom a delinquency petition has been filed.

C. The court shall require the attorney for the Commonwealth to provide to the evaluators appointed under subsection A any information relevant to the evaluation, including, but not limited to (i) a copy of the warrant or petition; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the juvenile, and the judge ordering the evaluation; and (iii) information about the alleged offense. The court shall require the attorney for the juvenile to provide to the evaluator only the psychiatric records and other information that is deemed relevant to the evaluation of competency. The moving party shall provide the evaluator a summary of the reasons for the evaluation request. All information required by this subsection shall be provided to the evaluator within 96 hours of the issuance of the court order requiring the evaluation and when applicable, shall be submitted prior to admission to the facility providing the inpatient evaluation. If the 96-hour period expires on a Saturday, Sunday, or other legal holiday, the 96 hours shall be extended to the next day which is not a Saturday, Sunday, or legal holiday. The appointed evaluator or the director of the community services board,

behavioral health authority, or hospital shall acknowledge receipt of the court order to the clerk of the court on a form developed by the Office of the Executive Secretary of the Supreme Court of Virginia as soon as practicable but no later than the close of business on the next business day following receipt of the court order. If the appointed evaluator or the director of the community services board, behavioral health authority, hospital, or private evaluator is unable to conduct the evaluation, he shall inform the court on the acknowledgement form.

D. If the juvenile is hospitalized under the provisions of subsection B, the juvenile shall be hospitalized for such time as the director of the hospital deems necessary to perform an adequate evaluation of the juvenile's competency, but not to exceed 10 days from the date of admission to the hospital. All evaluations shall be completed and the report filed with the court within 14 days of receipt by the evaluator of all information required under subsection C.

E. Upon completion of the evaluation, the evaluator shall promptly and in no event exceeding 14 days after receipt of all required information submit the report in writing to the court and the attorneys of record concerning (i) the juvenile's capacity to understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for services in the event he is found incompetent, including a description of the suggested necessary services and least restrictive setting to assist the juvenile in restoration to competency. No statements of the juvenile relating to the alleged offense shall be included in the report.

F. After receiving the report described in subsection E, the court shall promptly determine whether the juvenile is competent to stand trial for adjudication or disposition. A hearing on the juvenile's competency is not required unless one is requested by the attorney for the Commonwealth or the attorney for the juvenile or when required under § 16.1-357 B. If a hearing is held, the party alleging that the juvenile is incompetent shall bear the burden of proving by a preponderance of the evidence the juvenile's incompetency. The juvenile shall have the right to notice of the hearing and the right to personally participate in and introduce evidence at the hearing.

If the juvenile is otherwise able to understand the charges against him and assist in his defense, a finding of incompetency shall not be made based solely on any or all of the following: (i) the juvenile's age or developmental factors, (ii) the juvenile's claim to be unable to remember the time period surrounding the alleged offense, or (iii) the fact that the juvenile is under the influence of medication.

1999, cc. 958, 997; 2000, c. 337; 2005, c. 110; 2009, cc. 813, 840; 2021, Sp. Sess. I, c. 311.

§ 16.1-357. Disposition when juvenile found incompetent.

A. Upon finding pursuant to subsection F of § 16.1-356 that the juvenile is incompetent, the court shall order that the juvenile receive services to restore his competency in either a nonsecure community setting or a secure facility as defined in § 16.1-228. A copy of the order shall be forwarded to the Commissioner of Behavioral Health and Developmental Services, who shall arrange for the provision of restoration services in a manner consistent with the order. Any report submitted pursuant to subsection E of § 16.1-356 shall be made available to the agent providing restoration.

B. If the court finds the juvenile incompetent but restorable to competency in the foreseeable future, it shall order restoration services for up to three months. At the end of three months from the date restoration is ordered under subsection A of this section, if the juvenile remains incompetent in the opinion of the agent providing restoration, the agent shall so notify the court and make recommendations concerning disposition of the juvenile. The court shall hold a hearing according to the procedures specified in subsection F of § 16.1-356 and, if it finds the juvenile unrestorably incompetent, shall order one of the dispositions pursuant to § 16.1-358. If the court finds the juvenile incompetent but restorable to competency, it may order continued restoration services for additional three-month periods, provided a hearing pursuant to subsection F of § 16.1-356 is held at the completion of each such period and the juvenile continues to be incompetent but restorable to competency in the foreseeable future.

C. If, at any time after the juvenile is ordered to undergo services under subsection A of this section, the agent providing restoration believes the juvenile's competency is restored, the agent shall immediately send a report to the court as prescribed in subsection E of § 16.1-356. The court shall make a ruling on the juvenile's competency according to the procedures specified in subsection F of § 16.1-356.

1999, cc. 958, 997; 2009, cc. 813, 840.

§ 16.1-358. Disposition of the unrestorably incompetent juvenile.

If, at any time after the juvenile is ordered to undergo services pursuant to subsection A of § 16.1-357, the agent providing restoration concludes that the juvenile is likely to remain incompetent for the foreseeable future, he shall send a report to the court so stating. The report shall also indicate whether, in the agent's opinion, the juvenile should be (i) committed pursuant to Article 16 (§ 16.1-335 et seq.) of this chapter or, if the juvenile has reached the age of eighteen years at the time of the competency determination, pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, (ii) certified pursuant to § 37.2-806, (iii) provided other services by the court, or (iv) released. Upon receipt of the report, the court shall make a competency determination according to the procedures specified in subsection F of § 16.1-356. If the court finds that the juvenile is incompetent and is likely to remain so for the foreseeable future, it shall order that the juvenile (i) be committed pursuant to Article 16 (§ 16.1-335 et seq.) of this chapter or, if the juvenile has reached the age of eighteen years at the time of the competency determination, pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, (ii) be certified pursuant to § 37.2-806, (iii) have a child in need of services petition filed on his behalf pursuant to § 16.1-260 D, or (iv) be released. If the court finds the juvenile incompetent but restorable to competency in the foreseeable future, it may order restoration services continued until three months have elapsed from the date of the provision of restoration ordered under subsection A of § 16.1-357.

If not dismissed without prejudice at an earlier time, charges against an unrestorably incompetent juvenile shall be dismissed in compliance with the time frames as follows: in the case of a charge which would be a misdemeanor, one year from the date of the juvenile's arrest for such charge; and in

the case of a charge which would be a felony, three years from the date of the juvenile's arrest for such charges.

1999, cc. 958, 997; 2000, c. 216.

§ 16.1-359. Litigating certain issues when the juvenile is incompetent.

A finding of incompetency does not preclude the adjudication, at any time before trial, of a motion objecting to the sufficiency of the petition, nor does it preclude the adjudication of similar legal objections which, in the court's opinion, may be undertaken without the personal participation of the juvenile.

1999, cc. 958, 997.

§ 16.1-360. Disclosure by juvenile during evaluation or restoration; use at guilt phase of trial adjudication or disposition hearing.

No statement or disclosure by the juvenile concerning the alleged offense made during a competency evaluation ordered pursuant to § 16.1-356, or services ordered pursuant to § 16.1-357 may be used against the juvenile at the adjudication or disposition hearings as evidence or as a basis for such evidence.

1999, cc. 958, 997.

§ 16.1-361. Compensation of experts.

Each psychiatrist, clinical psychologist, licensed clinical social worker, licensed professional counselor, licensed marriage and family therapist, or other expert appointed by the court to render professional service pursuant to § 16.1-356, shall receive a reasonable fee for such service. With the exception of services provided by state hospitals or training centers, the fee shall be determined in each instance by the court that appointed the expert, in accordance with guidelines established by the Supreme Court after consultation with the Department of Behavioral Health and Developmental Services. If any such expert is required to appear as a witness in any hearing held pursuant to § 16.1-356, he shall receive mileage and a fee of $100 for each day during which he is required to serve. An itemized account of expenses, duly sworn to, must be presented to the court, and when allowed shall be certified to the Supreme Court for payment out of the state treasury, and be charged against the appropriations made to pay criminal charges. Allowance for the fee and for the per diem authorized shall also be made by order of the court, duly certified to the Supreme Court for payment out of the appropriation to pay criminal charges.

1999, cc. 958, 997; 2000, c. 337; 2005, c. 110; 2009, cc. 813, 840; 2012, cc. 476, 507.