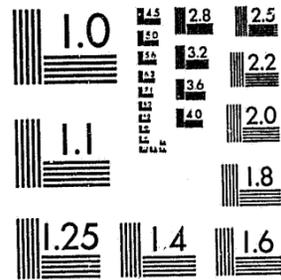


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VIRGINIA JUVENILE LAW  
AND PROCEDURE FOR THE  
LAW ENFORCEMENT OFFICER

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INTRODUCTION

The Virginia Juvenile and Domestic Relations District Court (hereafter J and D court or juvenile court) is different from Virginia's adult criminal courts. One major purpose is, where possible, to "divert from the juvenile justice system . . . those children who can be cared for or treated through alternative programs".<sup>1</sup> The traditional emphasis is on rehabilitation rather than on punishment and the welfare of the child and family is the court's foremost concern. Unlike the adult court, which is a very public place, the confidentiality of those youths who appear before it must be protected by the juvenile court.

Terminology between the two courts often is not the same. For example, in the juvenile court trials are labeled adjudicatory hearings and sentences are dispositions. Procedures are different. Preliminary hearings, grand jury indictments, and trials by jury are not required for juveniles alleged to have committed acts which would be felonies if committed by adults. While the jurisdiction of a Virginia Juvenile and Domestic Relations District Court does often include adults, its primary focus is on persons under eighteen. Briefly, the subject matter jurisdiction of the juvenile court, which will be described in detail later, is as follows:<sup>2</sup>

The juvenile and domestic relations court handles cases involving:

- delinquents
- juveniles accused of traffic violations
- children in need of services
- children who have been subjected to abuse or neglect
- adults accused of child abuse or neglect, or of offenses against members of their own family (juvenile or adult)
- adults involved in disputes concerning the support, visitation or custody of a child
- abandonment of children
- foster care and entrustment agreements
- court-ordered rehabilitation services
- court consent for certain medical treatments

Nationally, the new institution of the juvenile court was a turn of the century phenomenon. The first juvenile court was founded in Cook County (Chicago) Illinois in 1899 and by 1925 all but two states had a juvenile court. Virginia first provided for a special juvenile session of an adult court (Richmond Police Court - 1912) but soon created its first full-time juvenile court judge in Richmond in 1914.

As the result of the development of a statewide court system for the Commonwealth in 1973, there are now thirty-two separate and specialized juvenile and domestic relations district courts. With only one exception, each court has a full-time, specialized judge with a total of sixty-five judges throughout the state.<sup>3</sup> In addition to its court reform Virginia substantially revised its juvenile and domestic relations code beginning in 1977. Virginia's recodification affected the J and D court's jurisdiction by narrowing it in such areas as children in need of services while expanding it in others including child abuse and neglect. And the new code more thoroughly spells out rights and procedures for the juvenile court and its clients.

It is on these rights and procedures that this monograph will focus, especially as they affect the daily practice of Virginia law enforcement personnel. The remainder of this monograph will include sections on jurisdiction according to venue, age and subject matter; taking a juvenile into immediate custody including arrest, petitions and warrants; duties of a law enforcement officer after he has taken a juvenile into immediate custody when the juvenile court is open or closed; lineups and other pre-trial eyewitness identifications; confidentiality of police records; search of juveniles who have been taken into immediate custody or who have given their consent and searches by school officials; and interrogation and interview including constructive custody and waiver under the Miranda rights.

#### JURISDICTION OF THE JUVENILE COURT

The term jurisdiction refers to the lawful authority of a juvenile court over someone or something. For purposes of this monograph it is appropriate to describe three types: 1) venue, 2) age and 3) subject matter.

#### VENUE

Venue refers to place or geographic area of jurisdiction. There is a question sometimes over whether the juvenile court where the delinquent act took place or the one where the minor resides has jurisdiction, when the place (judicial district) of the act and place of residence are different. For example, Johnny Juvenile lives with his parents in Richmond. One weekend Johnny visits with his cousins and their family who live in Fairfax. During that visit Johnny and his cousins break into a Fairfax home and take \$500.00 worth of home entertainment equipment. Fairfax police catch Johnny and his cousins in the act. Under the general rule in Virginia when the juvenile court of a juvenile's residence and that of the place of a delinquent act are different, the court where the act took place has jurisdiction.<sup>4</sup> In this case this would be the court in Fairfax. An exception to the general rule can occur if there is a written consent by the juvenile and the commonwealth's attorney for each jurisdiction.

In a case of non-delinquency such as a child in need of services or a case of custody, the J and D court where the child resides (or where he is present when proceedings commence) has jurisdiction.

It is also possible to transfer jurisdiction from one juvenile court to another after adjudication but before disposition. In our Richmond/Fairfax example, once the Fairfax judge has adjudicated (made a judgment) that Johnny committed the delinquent act (B and E) but before making a disposition (determining sentence) Johnny could be transferred to the Richmond J and D court for purposes of his disposition. A request (motion) to do this could come from any party to the case, for example, by Johnny's attorney who feels that because Johnny is a first offender he should receive probation. Probation is better

served under the supervision of the residence juvenile court rather than that of the Fairfax court.

#### AGE

The second type of jurisdiction relates to age. There are basically three considerations: 1) minimum age, 2) maximum age for original jurisdiction and 3) maximum age for disposition (retention).

Minimum age depends upon whether the subject matter jurisdiction is delinquency or non-delinquency. At common law in Virginia, a child was conclusively presumed to be incapable of forming criminal intent (mens rea) to commit a crime until he reached the age of seven.<sup>5</sup> Since a crime is a delinquent act for a child it would not matter at common law if little Johnny Dillinger, age six, was running numbers, drugs and prostitution in his neighborhood. He could not be adjudicated a delinquent. However, if he committed these acts once he reached age seven, the juvenile court would have delinquency jurisdiction over Johnny. But, it is unclear whether there is still a minimum age for delinquency because Virginia's latest juvenile code in its statement of jurisdiction at sec. 16.1-241 A (1) includes all juveniles. Because of this ambiguity juvenile judges may take different positions on the existence of a minimum age.

On the other hand, there is no minimum age in the case of non-delinquency J and D court jurisdiction. If Johnny is a child in need of services or if he is neglected or an abused child, there is no minimum age.

Maximum age for original jurisdiction by a juvenile court in Virginia extends through age seventeen as it does in most other states. Generally original jurisdiction refers to the court of first instance which can adjudicate the case (i.e., conduct the trial). But sometimes this is confusing if the delinquent act was committed while an individual was under eighteen (juvenile) but police apprehension and/or court proceedings were not begun until after he had reached age eighteen. For example, what would be the result if Johnny Juvenile commits

a burglary when he is seventeen years and eleven months old but is not apprehended by the police and no juvenile court proceedings are begun against him until after he becomes eighteen years old? In Virginia the rule is that J and D court jurisdiction is determined at the time of the act and not at the time of apprehension or initiation of proceedings.<sup>6</sup> Consequently in this example, Johnny, although eighteen, comes under the juvenile court's jurisdiction for his delinquent act (burglary). This would even be true if Johnny were apprehended at age nineteen or twenty but there may be some upper limit where an individual could be considered to have outgrown the jurisdiction of the juvenile court.<sup>7</sup> There is no clear answer to this in Virginia, however, the statutes of limitations offer a potential resolution to all but capital murder cases.

But does the time of the act also determine the J and D court's jurisdiction in the case of non-delinquencies such as abuse and neglect and children in need of services? The answer is yes<sup>8</sup>, however, in many cases this would appear impractical. If Johnny Juvenile had run away at age seventeen years eleven months but he is not apprehended until after he is age eighteen, at which age he can no longer commit the status offense (CHINS) of running away, jurisdiction would seem pointless. And, should the juvenile court commit a child in need of services or abused or neglected child to, say, a local board of public welfare or social services, that child has a right to be free from that commitment, upon his request, when he reaches eighteen.<sup>9</sup>

This last example leads to the last consideration regarding jurisdiction and age. To what age can the disposition (e.g., sentence, commitment) continue once it has been made. Virginia permits a disposition such as incarceration, probation and after-care (parole) to continue up until age twenty-one.<sup>10</sup> However, in the non-delinquency cases just mentioned, eighteen is the termination point if it is requested.

But what if Johnny committed burglary at age seventeen, was put on probation by

the juvenile court, is now nineteen and has just committed another burglary. For the felony of burglary Johnny will be tried as an adult. However, he has also violated his conditions of probation in the juvenile court which court could revoke probation and even incarcerate Johnny (until age twenty-one). Nonetheless, Johnny could not be prosecuted in the juvenile court for delinquency (the second burglary) because he is an adult. The juvenile court's jurisdiction is based on the first burglary and its disposition of probation.

#### SUBJECT MATTER

Subject matter jurisdiction refers to the juvenile court's authority over different types of behavior. As noted earlier this behavior includes cases involving: 11

- delinquents
- juveniles accused of traffic violations
- children in need of services
- children who have been subjected to abuse or neglect
- adults accused of child abuse or neglect, or of offenses against members of their own family (juvenile or adult)
- adults involved in disputes concerning the support, visitation or custody of a child
- abandonment of children
- foster care and entrustment agreements
- court-ordered rehabilitation services
- court consent for certain medical treatments

A brief explanation of each of these types of subject matter jurisdiction follows: 12

Delinquent acts would be felonies, misdemeanors or infractions under Virginia state law; ordinance violations under city, county or town laws or crimes under federal law if they were to be committed by adults. Any one of these law violations by a juvenile simply carries a different label, i.e., delinquency.

Traffic violations, or more properly traffic infractions, by juveniles are actually delinquent acts. They are listed here as a separate category because moving violations such as speeding represent a significant percentage of the cases going through juvenile court.

Children in need of services (CHINS) are also known as status offenders. Unlike delinquent acts these are only offenses if committed by a juvenile. It is impossible for an adult to commit a status offense. Virginia includes truancy, running away from home and incorrigibility as its three major categories of CHINS. However the 1977 code revision narrowed the juvenile court's jurisdiction under these three categories by requiring additional conditions. In order for a child to be considered a truant, runaway or incorrigible:

- (i) the conduct complained of must present a clear and substantial danger to the child's life or health or (ii) the child or his or her family must be in need of treatment, rehabilitation or services not presently being received and (iii) the intervention of the court must be essential to provide the treatment, rehabilitation or services needed by the child or his or her family. 13

Therefore, jurisdiction over any runaway, truant or incorrigible child is not automatic. Additional inquiry must be made to see if either condition (i) or conditions (ii) and (iii) are met.

There is a fourth catch-all CHINS category which includes anything else which is an offense only if committed by a child, for example, curfew violations for juveniles or underage purchase or consumption of alcoholic beverages. In this fourth category of CHINS jurisdiction for the juvenile court to have jurisdiction, no additional conditions are required unlike a case of runaway, truancy or incorrigibility.

Children who have been subjected to abuse or neglect are really victims rather than actors and the court's jurisdiction over them is clearly protective. In appropriate cases of abuse and neglect, a juvenile court may order the removal of a child from parental custody or may even terminate parental rights to custody over their children.

Of course, the actors in cases of abuse or neglect are adults such as parents or guardians who are responsible for the child's care. In Virginia an abused or neglected child is defined as follows under Va. code sec. 63.1-248.2 A (1-4):

§ 63.1-248.2. Definitions.—The following terms, when used in this chapter, shall have the meanings respectively set forth below unless a different meaning is clearly required by the context:

A. "Abused or neglected child" shall mean any child less than eighteen years of age whose parents or other person responsible for his care:

1. 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, impairment of bodily or mental functions;

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

3. abandons such child; or

4. Commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law.

Included within abuse and neglect are both felonies and misdemeanors under the Virginia criminal code. For example, under sec. 18.2-371.1 child neglect is a class five felony; under sec. 18.2-370 taking indecent liberties with a child is a class 6 felony; under sec. 18.2-63 sexual intercourse with a thirteen or fourteen year old child is a class 4 felony; under sec. 18.2-51 malicious wounding, maiming and similar acts are class 3 felonies; whereas under sec. 18.2-314 a parent or other person who has custody of a child who knowingly fails to obtain medical attention for an injured child is chargeable with a class one misdemeanor; under sec. 18.2-371 it is a class one misdemeanor to cause or encourage acts which render a child delinquent, CHINS or abused and neglected; and assault and battery is a misdemeanor.

When the abuse or neglect constitutes a felony, juvenile court jurisdiction involves the preliminary hearing only—trial is in circuit court. But misdemeanors are tried in juvenile court. <sup>14</sup> Likewise the juvenile court's jurisdiction is restricted to preliminary hearings for felonies but trials for misdemeanors in its jurisdiction over offenses by one family member against another member of the

family.<sup>15</sup> Virginia's definition of family goes as far as to include grandparents and grandchildren.<sup>16</sup> Consequently if a husband were to maliciously wound (felony) his wife the J and D court's jurisdiction would extend only through the preliminary hearing, but if a husband assaults and batters (misdemeanor) his wife the J and D court has full jurisdiction to try the matter.

When adults are involved in disputes over custody, visitation or support of a child, the Juvenile Court has jurisdiction but it is not exclusive; it is concurrent with the circuit court.<sup>17</sup> Circuit courts have jurisdiction over divorce and adoption cases and therefore deal with custody, visitation and support. But in cases where a juvenile's parent or guardian becomes mentally incapacitated or for any other good reason wants to be relieved of the child's custody and care, the juvenile court has jurisdiction. Or if someone requests support or visitation of his or her children from his or her spouse following a separation, the juvenile court can have jurisdiction.

In those cases where a parent (or parents) desires to give up custody for good reason the parent may enter into an entrustment agreement with a local board of public welfare or child welfare agency whereby he may give up custody temporarily or permanently. For example, a single parent who is seriously ill and expects a long period of convalescence may wish to give up custody only until the convalescence is over, while a very young parent of an illegitimate child may seek to give up custody permanently. A juvenile court may order temporary or permanent foster care as appropriate.<sup>18</sup>

Disputes over visitation or support of a child include what are known as residual parental rights. Following a divorce the parent who loses custody often still has these residual parental rights such as visitation rights or the right to consent to adoption and the right to determine religious affiliation as well as the responsibility for support. A juvenile court can support or terminate these residual parental rights in appropriate circumstances.<sup>19</sup>

Finally, while not exhausting every conceivable type of juvenile court jurisdiction, for purposes of this monograph it should be noted that Virginia juvenile courts can order rehabilitation services<sup>20</sup> and can consent to certain medical treatments.<sup>21</sup> Examples include: the child abusing parent who is an alcoholic can be ordered into treatment; a mentally ill person can be civilly committed to a mental hospital; or consent for surgery for a child who needs emergency surgery but whose parents cannot be found promptly.

As stated earlier, this has not been an exhaustive description of the Virginia Juvenile and Domestic Relations Court's subject matter jurisdiction, but it has been one intended to include the major types of J and D court jurisdiction.

#### POLICE INVESTIGATIVE PROCESS AND THE JUVENILE OFFENDER - I

As in the adult process it is a law enforcement officer who usually initiates the juvenile justice process. By virtue of police discretion a juvenile either enters the process which takes him before the court or the juvenile is not placed into this process. Often in the past, neither by statute nor court decision was this police discretion adequately defined although such police practices were common. In Virginia such police discretion is expressly granted in delinquency and CHINS cases under sec. 16.1-247 B(1) and E(1).

By exercise of discretion is meant the practice of deciding not to invoke formal legal process even when it could be lawfully invoked. It is not unusual for a police officer to observe a delinquent act committed by a juvenile or to observe a CHINS and to reprimand the juvenile, let him go and never bring the matter to the attention of the juvenile court. In fact, some have estimated that during these initial contacts between law enforcement and juveniles, as many as fifty percent of the cases are disposed of by police in this informal manner. The exercise of this discretion is usually based on 1) seriousness of the offense, 2) reputation of the juvenile (if known) and 3) attitude of the juvenile, parents and/or complainant. Certainly any felony is unlikely to be handled informally. Also, if the officer has knowledge that the juvenile has a bad reputation he is more inclined to initiate formal proceedings against the child. And, if the juvenile displays a bad attitude toward an officer or about the offense, if the parent or guardian demonstrates a similarly poor attitude and/or if the complainant seems determined to press the case, the officer is much more likely to invoke formal process. The description of these three criteria is not included to suggest them as the best criteria available or as required by law. Nevertheless, these are the criteria commonly used.

There are several methods by which a law enforcement officer may invoke formal legal process against a juvenile. These include; 1) seeking a petition through intake or through the commonwealth's attorney, 2) taking the child into immediate custody but then releasing him to his parent or guardian and then seeking a petition, 3) taking a child into immediate custody (includes an arrest) and taking him before the juvenile court where the officer seeks a petition and 4) seeking a warrant against the child.

#### TAKING INTO IMMEDIATE CUSTODY

In order to best describe these examples of formal process it is appropriate at this point to explore the legal meaning and boundaries of taking a juvenile into immediate custody (TIIC) to include arrest. "Taking into immediate custody" is only used as a formal legal process in the juvenile justice system. In the juvenile system it is used against juveniles who are delinquent or who are children in need of services (CHINS) or who are abused or neglected. No such process is applicable in the adult criminal process (except, perhaps against a juvenile transferred to the adult court). TIIC was developed as a procedure to incorporate the protective jurisdiction of the juvenile court in cases such as abuse and neglect. Arrest, on the other hand, is a procedure applicable in both adult and juvenile process. An arrest can be made of a juvenile who is delinquent or a CHINS 22 but is not appropriate in the case of an abused or neglected child. 23

Both TIIC and arrest are lawful procedures which take someone's liberty and allow custody and control by a law enforcement officer. Both allow the use of force reasonable under the circumstances. The usual rules which differentiate the amount of force permitted as between felonies and misdemeanors apply to delinquencies as well. And since a CHINS is committing an offense which is less than a misdemeanor and since the child who is abused or neglected and who is taken into immediate custody has committed no offense, the less than

deadly force rule applied to misdemeanors is obviously appropriate. Consequently, both the common law rules regarding the use of force and the constitutional rules under the Fourth and Fourteenth Amendments regarding the force allowable in a reasonable seizure are fully applicable.

The Fourth Amendment rules regarding reasonable seizures also apply in both instances when it comes to requiring reasonable justification. There is a question whether that justification can be different between the two but still be reasonable. Clearly an arrest in the adult process requires probable cause and there would be no reason to treat it differently under juvenile law. 24 It also appears to be clear that in those instances where TIIC is used for a delinquent, probable cause is required. 25 However, the standard of proof required for TIIC in the case of a CHINS 26 or an abused and neglected child 27 is not clearly stated by either statute or case law. Consequently, some juvenile judges may permit a standard which is lower such as a reasonable suspicion in some CHINS cases or in the case of abuse and neglect. But since the standard is unclear, prudence suggests adherence to a probable cause standard.

As will be noted later in the section on interrogation and interview both TIIC and arrest satisfy the custody requirement which, together with other circumstances, mandates the giving of the Miranda warnings. Both procedures can be used with or without prior authorization. 28 Often the prior authorization for an arrest is a warrant.

TIIC is the method preferred over arrest and petitions are preferred over warrants. In fact an arrest based on a warrant issued by a magistrate is limited to the three instances as follows: 1) In the case of a delinquency amounting to a felony or class one misdemeanor when the juvenile court intake officer has refused to authorize a petition, the complainant can take the case to a

magistrate. If the magistrate finds probable cause he can issue a warrant which is delivered to the intake officer who must then file a petition based on the warrant.<sup>29</sup> 2) In the case of a child under the age of fifteen, only if authorized by the judge, intake officer or clerk of a J and D court or a judge or clerk of a circuit court. 30 3) In the case of delinquency or CHINS when a juvenile is fifteen or older and the juvenile court is closed and the juvenile judge, intake officer or clerk are not reasonably available and the criteria for detention or shelter care sec. 16.1-248 are met. Not reasonably available means the juvenile court judge, intake officer or clerk could not be reached when the juvenile was taken before the magistrate or could not arrive within an hour after he was contacted. 31 The criteria for detention or shelter care will be discussed shortly in connection with the discussion of when a juvenile can be taken into immediate custody.

Arrest can be viewed as a type of TIIC or even as a synonym for it at least in cases of delinquency and CHINS. For example, TIIC can also follow a warrant.<sup>32</sup> But an arrest following a warrant is restricted to the three circumstances listed above.

When a child may be taken into immediate custody (includes arrest) is governed by sec. 16.1-246. This statute permits TIIC in the following six categories: pursuant to a detention order, warrant, in certain cases of a CHINS, in cases of delinquency, in cases where the child has run away from a commitment to the Department of Corrections or placement in a child care facility, and in cases of a temporary detention order for a mentally disturbed juvenile. Taking an abused or neglected child into custody (not including arrest) is governed by secs. 16.1-251 and 63.1-248.9. Section 16.1-246 and those statutory sections and procedures directly related to it will be described first. While reading sec. 16.1-246 be certain to notice the six categories for TIIC and the emphasis on probable cause requirements in most. The statute follows:

§ 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 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 insure 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 State, 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

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 Corrections 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 that 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 public welfare or 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. With a temporary detention order issued in accordance with 37.1-67.1 by a special justice appointed pursuant to 37.1-88, who shall receive no fee, or by a magistrate. (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) 33

#### DUTIES OF PERSON TAKING CHILD INTO CUSTODY

Section 16.1-246 (above) describes the circumstances or conditions which permit a law enforcement officer to take a juvenile into immediate custody (includes arrest). What the officer does next following his taking of a juvenile into immediate custody is equally important. This is governed by sec. 16.1-247 which defines the rules covering what to do immediately following

TIIC, and should be read together with sec. 16.1-246. The reader will notice that sec. 16.1-247 is organized into two major portions describing what a law enforcement officer must do depending upon whether the court is open or closed. In that portion of sec. 16.1-247 covering what the officer should do when the J and D court is open, sec. 16.1-247 is further divided into subsections describing the officer's duties according to whether the TIIC was 1) pursuant to a detention order or warrant sec. 16.1-246 A, 2) in a case of CHINS or delinquency sec. 16.1-246, B, C or D and 3) in cases where the child has run away from a commitment to the Department of Corrections or placement in a child care facility sec. 16.1-246 E and F.

Likewise in the portion of sec. 16.1-247 which deals with a law enforcement officer's duties following TIIC when the juvenile court is closed, there is a similar organizational breakdown in relation to 16.1-246. However, secs. 16.1-246 E and F are treated separately because the officer is required to treat a child who has run away from a commitment to the Department of Corrections differently from a runaway from placement in a child care facility. The statute follows:

§ 16.1-247, Duties of person taking child into custody

--A. A person taking a child into custody pursuant to the provisions of 16.1-246 A, 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.

C. A person taking a child into custody pursuant to the provisions of subsection 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 16.1-246 A, 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 subsections 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 subsection B1 or B2, hereof; or

2. Release the child on bail or recognizance pursuant to Chapter 9 of Title 19.2; or

3. Place the child taken into custody pursuant to 16.1-246 B 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 subsections 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.

F. A person taking a child into custody pursuant to the provisions of 16.1-246 E, 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.

G. A person taking a child into custody pursuant to the provisions of 16.1-246 F, 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 subsections B2 and E1 hereof, the court may issue a detention order directing that the child be taken into custody and be brought before the court.

1. A law-enforcement officer taking a child into custody pursuant to the provisions of 16.1-246 G 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 twenty-four 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. (Code 1950, 16.1-197, 1956, c. 550; 1958, c. 344; 1973, c. 440; 1974, c. 584; 1975, c. 248, 1977, c. 599; 1978, c. 643; 1979, c. 701) 34

#### JUVENILE COURT OPEN

Under that portion of sec. 16.1-247 which details an officer's duties when juvenile court is open the statute is organized according to the type of TIIC it is under sec. 16.1-246 as noted above. When the officer has TIIC under a detention order or warrant, he must bring the child to the juvenile judge or intake officer and notice must be given to the child's parents or guardian by either the officer or the judge or intake officer.<sup>35</sup> In cases where the TIIC is for CHINS or delinquency under secs. 16.1-246, B, C or D the officer may release the juvenile to his parents or guardian following a reprimand only, or with their agreement to bring the child to the juvenile court when requested or the officer may take the juvenile to the juvenile judge or intake officer. If the latter is done the officer must expeditiously provide the judge or intake officer with written notice of the custody and reasons therefore. Notice must then be provided to the parents or guardian by the officer, judge or intake officer.

When a child who has escaped from a commitment to the Department of Corrections or placement in a child care facility is TIIC under secs. 16.1-246 E or F the officer may do one of two things. He can release the juvenile to the institution or facility from which he escaped or he can take the child to the juvenile judge or intake officer. If he does the latter he must expeditiously provide the judge or intake officer with written notice and reasons therefore. Notice must be then provided to the parents or guardian and to the institution or facility by the officer, judge or intake officer.

#### JUVENILE COURT CLOSED

Under secs. 16.1-247 D-G an officer's duties are detailed according to the category of TIIC when the juvenile court is not open. A child TIIC pursuant to a warrant can be released into parental or guardian custody on bail or

recognizance by a judicial officer such as a magistrate or judge (see sec. 19.2-119 et seq.). A child TIIC pursuant to a warrant or a detention order may be placed into a detention home, shelter care or jail.

A considerable number of juveniles are detained in Virginia jails each year. In order to place a juvenile in jail the following conditions must be met.<sup>36</sup> The juvenile must be at least fifteen years old and alleged to be delinquent. The jail must be approved for such purposes by the Department of Corrections, must be adequately supervised and the juvenile must be kept separately from adults (both by sight and sound). If all the just mentioned conditions are met together with any one of the following four criteria a juvenile may be jailed: 1) there is no room at the juvenile detention facility or 2) the juvenile has previously been transferred to the circuit court or 3) the juvenile is alleged to have committed a class 1, 2, or 3 felony and the judge or intake officer has determined the juvenile facility is not suitable to protect the community or child or 4) the juvenile detention facility is in another city or county at least twenty-five miles away. Under this last criteria (4) a juvenile can only be held in jail up to seventy-two hours.

When a juvenile is TIIC as a delinquent or CHINS under secs. 16.1-246 B, C or D when the court is not open the officer may release the juvenile to his parents or guardian following a reprimand only, or with their agreement to bring the child to the juvenile court when requested. The child may also be released to his parent or guardian on bail or recognizance by a judicial officer (see sec. 16.1-119 et seq.). A child alleged to be delinquent can be placed in a juvenile detention facility or shelter care after issuance of a warrant by a magistrate. Also a child alleged to be delinquent or CHINS can be placed into jail after issuance of a warrant by a magistrate and subject to the previously listed conditions and criteria for jailing a juvenile.

Section 16.1-247F deals with escaped juveniles who have been TIIC when the court is closed. In the case of a juvenile who has escaped from a commitment to the Department of Corrections or one who has run away from placement in a child care facility, the first choice for the officer is to return him to the facility from which he escaped. That failing, the child who escaped from the Department of Corrections commitment could be placed in a detention home or jail pursuant to a magistrate's warrant but the child who escaped from the child care facility can only be placed in shelter care pursuant to a detention order or a magistrate's warrant. Once again jailing is subject to the previously listed conditions and criteria.

Finally under sec. 16.1-246G, if a law enforcement officer TIIC a juvenile whom he has probable cause to believe is a runaway or "is without adult supervision at such hours of the night and under such circumstances that the . . . officer reasonably concludes that there is a clear and substantial danger to the child's welfare" he must notify the intake officer who will determine whether to file a petition. If the intake officer refuses to file a petition the law enforcement officer must 1) release the child or 2) return the child to his home or 3) release the child to his parent or guardian or 4) seek a detention order from the juvenile judge, intake officer or court clerk which if granted can hold the child in shelter care not to exceed twenty-four hours.

A review of sec. 16.1-247 demonstrates that when a child is TIIC and the court is open there is an emphasis on releasing the child or taking the child to the juvenile judge or intake officer. On the other hand when the court is closed there is also emphasis on release including bail or recognizance but magistrate's warrants and detention, even in jail, are permitted under appropriate circumstances.

In those cases where a juvenile is brought to a juvenile judge, intake officer or magistrate the preference is for immediate release to the parent

or guardian or "other suitable persons able and willing to provide supervision and care" and including release on bail or recognizance.<sup>37</sup> But a juvenile may be detained on a detention order or warrant when any one of the following three criteria is demonstrated by "clear and convincing evidence": "1) there is no parent, guardian or other suitable person able to supervise the child or 2) there is an unreasonable danger to persons or property when the child is alleged to be delinquent or 3) there is a clear and substantial threat of serious harm to the child's life or health."<sup>38</sup> One of these criteria must be met in order to continue the immediate custody of the child pursuant to secs. 16.1-246 A-G. In fact any child so detained has a right to a detention hearing the next court day and not later than seventy-two hours if his detention is sought to be continued until the juvenile's transfer or adjudicatory hearing.<sup>39</sup> Any law enforcement officer who expects a juvenile's detention to be continued must also be familiar with the above listed detention criteria (sec. 16.1-248).

#### ABUSE AND NEGLECT - TIIC

A child who is abused or neglected and whom a law enforcement officer seeks to take into custody is subject to different provisions of the Virginia Juvenile Code, especially sec. 63.1-248.9 and secs. 16.1-251 and 252. Under those circumstances where a law enforcement officer does not have time to seek an emergency removal order first, he may TIIC an abused or neglected child providing he meets the conditions listed in sec. 63.1-248.9 as follows:

§ 63.1-248.9. Authority to take child into custody.  
 — A physician or protective service worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to seventy-two hours without prior approval of parents or guardians provided:

A. The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for the child's care, presents

an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result; and

B. A court order is not immediately obtainable; and

C. The court has set up procedures for placing such children; and

D. Following taking the child into custody, the parents or guardians are notified as soon as practicable that he is in custody; and

E. A report is made to the local department; and

F. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than seventy-two hours, an emergency removal order pursuant to § 16.1-251; provided, however, if a preliminary removal order is issued after a hearing held in accordance with § 16.1-252 within seventy-two hours of the removal of the child, an emergency removal order shall not be necessary. (1975, c. 341; 1977, c. 559)

It should be noted that prior to exercising such authority a law enforcement officer must know that the J and D court has set up appropriate procedures for placing the child. The report which must be made by the officer to the local department means to the local department of public welfare or social services of the county or city.

Section 63.1-248.9 does not set out a standard of proof such as reasonable suspicion or probable cause. Prudence would dictate that the officer adhere to the higher standard, probable cause. Another section, 63.1-248.5, does provide immunity from civil or criminal liability for the officer who takes an abused or neglected child into custody under sec. 63.1-248.9 unless that officer acts with "malicious intent". And a law enforcement officer, based on a reasonable suspicion of abuse or neglect, may talk to the child or his siblings without the consent of his parent or guardian.<sup>40</sup>

It should also be noted that in cases of suspected child abuse: 1) husband-wife and physician-patient evidential privileges are waived,<sup>41</sup> 2) without the consent of parents or guardian photographs and x-rays of the child may be taken as part of a medical evaluation or photographs may be taken as part of the

investigation by the local department or J and D court,<sup>42</sup> and 3) the juvenile court can order psychological, psychiatric and/or physical examinations of the child, his siblings and/or parents or guardian.

An abused or neglected child may also be TIIC and placed in shelter care on the basis of an emergency removal order issued by a juvenile judge or intake officer. The criteria for an emergency removal order are self-explanatory and are listed in the statute as follows:

§ 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 of abuse or neglect. 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 or her parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition; and

2. There are no alternatives less drastic than removal of the child from his or her 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.

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 days after the removal of the child. (1977, c. 559.) 44

Once a child has been TIIC (includes arrest) and there is a need to transport him, it is important to note that there are several restrictions on that transportation. If the juvenile is under fifteen he shall not be transported in a police patrol wagon and no child shall be transported together with

adults who are charged with or even suspected of the commission of a crime.<sup>45</sup> Patrol wagons are "paddy" wagons and not police cruisers (cars).

As in the case of an adult criminal investigation, law enforcement officers may wish to take photographs and fingerprints of a juvenile believed to be a delinquent. Photography and fingerprinting of delinquents are permitted under certain circumstances as governed by sec. 16.1-299. Photographs and fingerprints may be taken of any juvenile who is fifteen or older when charged with a felony. Photographs and fingerprints may be taken of a juvenile who is below fifteen but at least thirteen if he is charged with any of the following felonies: 1) bodily wounding (sec. 18.2-53.1 or sec. 18.2-52) 2) use of a firearm in committing a felony (sec. 18.2-53.1) 3) attempted poisoning (sec. 18.2-54.1) 4) extortion (sec. 18.2-59) 5) robbery 6) rape (sec. 18.2-61) 7) arson (secs. 18.2-77 through 88) or 8) murder.

Fingerprints (but not photographs) can be taken of a juvenile of any age and any offense when the law enforcement officer has probable cause to believe the latent prints discovered in the investigation of an offense are those of that child.

The fingerprints and photographs of a juvenile thirteen or over who has been adjudicated delinquent (found guilty) may be retained. When any juvenile is not adjudicated delinquent (not found guilty), his photographs and fingerprints shall be destroyed. Even when adjudicated delinquent, the photographs of children under thirteen shall be destroyed.

#### LINEUPS AND OTHER PRE-TRIAL IDENTIFICATIONS

The law on lineups and other types of pre-trial, eyewitness identifications appears to apply equally to juveniles and adults.<sup>46</sup> In Virginia there is no exception to this general rule and no statute found in the juvenile code governing this situation.

Essentially there are two legal questions regarding lineups and other types of pre-trial identifications. The first question is whether the pre-trial identification is so impermissibly suggestive that it likely could lead to a mistaken identification.<sup>47</sup> For example, if the police were to tell an eyewitness that they were confident that Johnny Juvenile committed the robbery and then ran a lineup with Johnny as the only individual in it, this would be unlawfully suggestive.

The second question involves the right to counsel during a pre-trial identification. The U.S. Supreme Court decided that this right, which is really intended to prevent an impermissibly suggestive identification, applies at an identification which takes place after "adversary judicial criminal proceedings".<sup>48</sup> It is still an open question as to how early in the adult process such a point and, therefore, the requirement of counsel exists. Nor has there been a decision about when this occurs in the juvenile process. Arguably, this point could occur as soon as the petition is filed. Consequently, only the police investigative process occurring prior to the petition would be free of the requirement of counsel. However, it should be remembered that impermissibly suggestive identifications which would lead to mistaken identifications are never permitted.

As a final point, should an unlawfully suggestive pre-trial identification, lineup or any other type, occur, it is still possible for there to be a constitutional in-court identification under some circumstances. These circumstances would occur when the witness has an independent basis for his in-court identification.<sup>49</sup> For example, if a witness had known the defendant and could have recognized him prior to the commission of the crime and without the lineup.

#### POLICE RECORDS - CONFIDENTIALITY

One of the historical and continuing purposes of the juvenile court has been to keep confidential the names and proceedings of juveniles before the court. Virginia's juvenile code preserves from disclosure to the public the records names, reports, etc. of juveniles maintained by the Department of Corrections,<sup>50</sup> law enforcement agencies<sup>51</sup>, and the courts.<sup>52</sup> As one might imagine these records are kept confidential from the public but persons and agencies with legitimate needs for access are generally permitted that access. And, judges are permitted discretion in some circumstances to allow access not otherwise specifically permitted.<sup>53</sup>

For purposes of this monograph there will be some discussion of the confidential nature of law enforcement records.<sup>54</sup> Law enforcement agencies are required to keep separate and confidential records on juvenile law violations (including those records of photographs and fingerprints mentioned earlier) except in the case of motor vehicle law infractions or when a juvenile charged with a delinquency (felony) is transferred to adult court.

In spite of the confidential nature of law enforcement records on juveniles, certain persons and agencies are permitted access. These include 1) any court with a proceeding involving the child, 2) certain categories of court and/or custodial or treatment officials<sup>55</sup>, 3) by order of the juvenile court; the child, parent or guardian or child's counsel; law enforcement officers of other jurisdictions; and others with legitimate interests in the case or the law enforcement agency and 4) other state, local or federal law enforcement agencies who wish to obtain "current information on juvenile arrests."<sup>56</sup> This information is "limited to name, address, physical description, date of arrest, and the charge for which the arrest was made."<sup>57</sup> The receiving agency can only use the information on current investigations and not to build new records and files on the particular juvenile (s).

Should these confidential records or any confidential information derived from such records be revealed, the person revealing those records or information is guilty of a class three misdemeanor. 58

Lastly it should be noted that a juvenile's records can be destroyed and expunged under certain circumstances.<sup>59</sup> Each year records of (misdemeanor) delinquency and CHINS shall be destroyed by the juvenile court clerk for those juveniles who have attained the age of nineteen and for whom five years have passed since the date of his last hearing in juvenile court. Felony delinquency records on juveniles found guilty and records of other acts by those juveniles are not destroyed but are sealed for twenty years and are only accessible to the person whose record it is and to the juvenile, general district and circuit courts for sentencing purposes. However, these records can be expunged ten years after the date of the person's last hearing in juvenile court at that person's request and at the discretion of the juvenile court judge and after notification to the Commonwealth's attorney. In any event they are destroyed after twenty years. Persons found innocent of misdemeanor delinquency can request expungement at any time. Again the commonwealth's attorney is notified but absent good reason not to, the juvenile court shall grant the request.

When records are destroyed under the above provisions, all agencies with such records shall destroy their records, not just the juvenile court, and "the violation of law shall be treated as if it never occurred."<sup>60</sup>

## POLICE INVESTIGATIVE PROCESS AND THE JUVENILE OFFENDER - II

### SEARCH OF JUVENILES

In general the rules applicable to searches of adults under the Fourth Amendment apply in the same fashion to juveniles. The general rule that a warrant or some exception to the warrant requirement such as a search by consent, search incidental to a lawful arrest or search under emergency circumstances, applies equally to adults and juveniles. In fact the same slow and sometimes confusing appellate case by case development of the Fourth Amendment forms the basis of law for both. Virginia's juvenile code does not speak to the issue of searches and the few provisions under Title 19 of the Virginia Code which do, make no exceptions for juveniles. And the exclusionary rule of evidence is the same for each.

However, there are several areas where the Fourth Amendment is either different or special in its application to juveniles. These areas include; 1) search of a juvenile who has been taken into immediate custody, 2) consent searches and 3) school searches.

#### SEARCH INCIDENTAL TO IMMEDIATE CUSTODY

As explained earlier in the section on initial contact dealing with the juvenile offender, a juvenile may be taken into immediate custody (TIIC) in circumstances where an adult would be arrested. Often either arrest or TIIC may be used but TIIC is preferred by statute. In those cases where a delinquent is TIIC as the preferred alternative to arrest, it should be clear that the normal Fourth Amendment rules permitting a warrantless search incidental to that procedure would apply because the circumstances and justifications for a search are the same for either TIIC or arrest.

But TIIC can be used for other situations. For example, a child who is the victim of abuse or neglect could be TIIC. Clearly, since this is a protective procedure rather than an enforcement procedure applied to a juvenile offender,

there is no justification for a search incident to TIIC. But in the case of a child in need of services (CHINS), which the reader recalls includes offenses by juveniles such as truancy and violations of juvenile curfews, there is much more similarity to cases of delinquency. Unfortunately, there is no clear line of case law or statutory authority for a search of a CHINS so juvenile court judges can hold different views. The preferred view seems to be that taking into immediate custody a CHINS offender is similar enough to delinquency, i.e., these are wrongful acts by the juvenile, for warrantless search to be conducted incident to TIIC.<sup>61</sup>

#### CONSENT SEARCHES

In the area of consent searches there are three circumstances which raise special concerns under the Fourth Amendment: a) voluntariness, b) juvenile consent against parents, and c) parental consent against juveniles.

Juveniles may consent to a search just as an adult can. With consent searches by adults or juveniles the primary determinant of lawfulness is the voluntariness on the part of the person who consents. Although the legal trend is not clear there is the possible question of a juvenile's greater vulnerability to intimidation making it somewhat more difficult to obtain a voluntary consent from a juvenile. While it is not entirely clear that such a distinction between adults and juveniles exist, some judges may treat juvenile consent searches more carefully than adult consent searches on the issue of voluntariness.

Juvenile consent search law is somewhat different from adult as it affects third party consent. General principles of third party consent when applied to adults include:

- 1) The authority for a third party to consent rests upon mutual use of the property by persons who have joint access or control for most purposes so that there is a common authority over the property.

- 2) Any coinhabitant can permit inspection.

- 3) When there is a lack of co-equal dominion and control over property there is a lack of common authority so that property on the same premises over which one party has exclusive rights and control cannot be searched on the basis of third party consent.

As a general rule, a juvenile may not consent to a search against his parents.<sup>62</sup> This is so even though the child has full use of the common area, such as a family room, because courts have almost universally held that common authority between parent and child does not exist in a home provided to the juvenile by the parent. Equal rights of use and occupation are not thought to exist.

While the weight of the law is clear in the area of third party consent by a child against his parent it is not as obvious when a parent can consent against his child. Nevertheless, some general principles can be established here as well.

As a general rule parents can consent to the search of their child's room.<sup>63</sup> This is based variously on the parents' superior rights of use and occupation of the home which they provide to the child and as head of the household a parent is in control of the entire premises including the child's room. Moreover, parents possess the right and responsibility for control, discipline, and education of their children which extend over the child's use and behavior in the child's room. And courts in this jurisdiction have permitted parental consent to search a room even in cases where the children were adults.<sup>64</sup> What is unclear, however, is what can or cannot be searched once inside the room? Cases in our jurisdiction have only dealt with adult children or with children who were tried as adults. These courts have never squarely faced the issue of parental consent against a minor child.<sup>65</sup> Our U.S. Court of Appeals for the Fourth Circuit has limited the scope of parental consent when there were closed containers which were under the exclusive control of the child saying that only the child could consent because he held an expectation of privacy. In spite of the fact that courts within this jurisdiction have not squarely faced the issue in the case of a minor child, it may

be wise to determine which closed containers in a child's room are within his exclusive control and then seek either the child's consent or a warrant.

As a final note, other considerations in individual cases may be important regarding parental consent. If a child were paying room and board it would appear that parental authority to consent was diminished. But under more usual parent-child relations (no rent) the parent with ordinary parental access to a child's room can consent to the search of his/her child's room.

#### SCHOOL SEARCHES

School searches present another interesting exception to normal Fourth Amendment rules. The questions here concern what school officials are permitted to do especially regarding the search of school lockers, students' automobiles, and the students themselves

Historically most courts viewed searches by school officials as searches by private (non-government) persons so that the Fourth Amendment and the exclusionary rule were not applicable. Today, however, the clear trend is to recognize public school officials as government agents and as controlled by Fourth Amendment restrictions. However, even the modern trend does not obligate school officials to meet the same probable cause and warrant requirements as the police. Today the trend in the law is to require school officials to demonstrate that they have a reasonable suspicion only and then they are permitted to search without the necessity of a search warrant.<sup>66</sup>

The reasoning behind this is the recognition that students in elementary, middle and high schools do have a Fourth Amendment right to privacy. But balanced against that right to privacy is the fact of the school official's standing in loco parentis which permits the use of parental powers such as limited use of force, discipline and order maintenance consistent with the need to maintain a proper and effective educational atmosphere. Also school officials have a special obligation towards the health, welfare and safety of their students.

In striking a balance between school officials standing in loco parentis and students' rights to privacy, courts have required that school officials meet standards (articulable facts to support a reasonable suspicion) but the standards are less than those required of law enforcement officials.

The privacy expectations of students are greatest with respect to their persons and may be considered to exist with regard to their cars parked in a school parking lot. There is divided authority among the courts over the expectation of privacy in a student's school locker. Some courts view the locker as having a reasonable expectation of privacy similar to that of the student's person while others do not. Those that do not reason that the student has no reasonable expectation of privacy against a school official's search of his locker given such common circumstances as the school's ownership and maintenance of the lockers and the fact that the school also has the combination to the locker and preserves the right to inspect the locker. Since the courts are divided over what the rule should be over the search of a student's locker, one could expect that judges in Virginia juvenile courts would hold different views. Therefore, in some juvenile courts school officials will have to have a reasonable suspicion for a warrantless search while no justification will be required in others.

Sometimes law enforcement officials become involved in searches by school officials. The question here is under what circumstances does law enforcement participation become sufficient enough to make the search a joint venture or turn it into a search where school officials are acting as agents of the police so that normal law enforcement requirements must be met under the Fourth Amendment? If the police called the school principal to the police station one morning and there got him to agree to conduct a search of a student or his locker later that afternoon in a search conducted jointly by the principal and the police, such a search would really be a police search. On the other hand, if school

officials were conducting their own search of a student but the student physically resisted the search and school officials called a police officer in for assistance at the last minute, this would remain a search by school officials. The distinctions in these examples lie in the amount of police participation, whether the police instigated or directed the search and whether school officials acted mostly independently of the police so that they were not just acting as police agents.

The last issue to be considered concerns the use of drug detection dogs on students, lockers and automobiles in a generalized search for drugs. This is a fairly recent practice and courts which have considered this practice so far are divided on its constitutionality.<sup>67</sup> One view is that drug detection dogs are similar to plain view so that there is no search while another view is that it constitutes a fishing expedition search without any articulable facts for a reasonable suspicion directed at any particular suspects. One court permits the use of drug detection dogs against automobiles in school parking lots and against lockers without particularized, reasonable suspicion, but requires that there be reasonable suspicion specific to certain students when the dogs sniff the student's person because the search of the person is more intrusive of his privacy.<sup>68</sup> It should be noted that these cases involve the use of dogs operated by private security firms rather than by government/law enforcement. Only time and case law will determine if the courts would view the case differently if police drug detection dogs were used.

Since the use of drug detection dogs in a generalized search by school officials represents one as yet unsettled area, one can expect that different judges in this jurisdiction may hold different views. However, the use of drug detection dogs by school officials who have particularized, reasonable suspicion which points to specific students against whom the dogs are used would be constitutionally acceptable.

POLICE INVESTIGATIVE PROCESS AND THE JUVENILE OFFENDER - III

INTERVIEW AND INTERROGATION

The Fifth Amendment right against compelled self-incrimination applies to juveniles just as it applies to adults including the advice of Miranda rights and a valid waiver of those rights. Otherwise, a juvenile's confession or admission is inadmissible. The Miranda rights against self-incrimination and to an attorney are discussed here because of some of the differences in their application to juveniles.

As in adult law there are a set of circumstances which, if they exist, require the advice of the Miranda rights as well as their valid waiver. These are: custodial police initiated interrogation of a suspect about evidence of his own guilt regarding a felony. (In the case of a juvenile, a delinquent act which would be a felony if committed by an adult).

Consequently, there are many circumstances which don't require Miranda. If the questioning or interrogation which produced a confession was conducted by private citizens (not acting as agents of the police) rather than the police, even though all the other circumstances such as custody were present, any confession would be admissible without Miranda. This is because constitutional limitations such as those of the Fifth Amendment apply only to government officials and not to private citizens. Of if the police ask a juvenile questions about another person's involvement in a crime, Miranda doesn't apply because the juvenile would not be incriminating himself. Or if a juvenile were to make a volunteered or spontaneous statement not in response to a police question Miranda is applicable. For example, a juvenile is arrested by patrol officers who tell the juvenile that they are not going to ask him any questions but that a police juvenile officer, whom he will see later, might have questions for him. The juvenile is neither questioned by the patrol officers nor given his Miranda warnings. However, on

the way to the police station and while in the patrol car, the juvenile blurts out "O.K., you got me, I'm the one who committed the burglary of the Smith's home". In spite of the fact that the juvenile is in custody, Miranda is not required because he has not been questioned by the police. Instead he has volunteered a confession. And, finally, in Virginia if all the Miranda circumstances listed above existed but the crime for which the juvenile was a suspect and about which questions were asked was not a felony, all Miranda circumstances are not met.<sup>70</sup> Consequently, juveniles who have allegedly committed a misdemeanor (delinquency) or those who are children in need of services (CHINS) are not entitled to the Miranda warnings.

#### CONSTRUCTIVE CUSTODY

Often the real question over the applicability of Miranda has to do with whether or not the juvenile is in custody. It is in this area of custody that Miranda has some special applications to juveniles. First of all as noted earlier, a juvenile believed to be delinquent may be arrested or taken into immediate custody (TIIC). Of course adults can be arrested but not TIIC. Regarding the Miranda requirements and juveniles, TIIC of a delinquent is the same as arrest for purposes of satisfying the requirement that the child be in custody. Police interrogation of a juvenile suspect about evidence of his own guilt of a delinquency (felony) when that juvenile has been taken into immediate custody is custodial police interrogation and Miranda applies.

But what if a juvenile has neither been arrested nor taken into immediate custody? Can he still be in custody for purposes of Miranda? Like an adult the courts can find that a juvenile is in "constructive" custody and require Miranda. Constructive custody is not "legal" custody like an arrest or TIIC but is described by courts as a set of circumstances under which a reasonable person would feel his freedom of movement was restricted in a significant way, and apply Miranda just as it would be applied if someone were under arrest.

In a juvenile court the reasonable person would be a reasonable juvenile and the court would go about determining if his freedom of movement were restricted in a significant way by applying the "totality of circumstances test." The judge would review the particular circumstances surrounding the questioning of the juvenile by law enforcement officers in order to determine if there was constructive custody of a juvenile. The circumstances are listed as follows: 1) place of questioning, 2) time of questioning, 3) number of persons questioning, 4) manner of questioning and show of force, 5) length of questioning or detention, 6) age of juvenile, 7) experience of the juvenile with the justice system, and 8) presence or absence of supportive adults.

It is useful to examine each one of these circumstances as it may affect whether a reasonable juvenile would feel his freedom of movement was restricted in a significant way. If a juvenile were questioned in his home he would feel freer to move about than if he was at the police station. People are generally more alert and in control of themselves and their faculties at two p.m. rather than two a.m. One officer questioning a juvenile is less restrictive than if three are doing the "interview". Questioning which is polite and considerate by a plain clothes officer is thought to show little or no force when contrasted with questioning by uniformed officers who ask questions in an aggressive, demanding manner. Questioning which lasts for fifteen minutes while a juvenile is not detained is not restrictive of a juvenile's movements as opposed to questions which stretch on for an hour or more.

The fact that any juvenile is, by definition, a young person supports the general assumption by many juvenile courts that because of their youth juveniles are more likely to be intimidated by law enforcement officers than adults. It does not follow, however, that because one is a juvenile that courts will assume there is intimidation and that a juvenile is, therefore, considered to be

in constructive custody. But, children who are very young, e.g., thirteen or below, will receive special consideration by many judges. Coupled with age is the presence or absence of a juvenile's experience with the justice system. A first offender is more likely to be found in constructive custody than a third offender. Finally, the presence or absence of supportive adults such as parents or guardian is important. Parents or guardian are felt to provide psychological support for a child who would more likely believe himself able to leave and/or not have to answer the police questions if his parents were present and looking out for his best interests. (More on parental role later regarding the waiver of the Miranda rights.)

Certainly each of the above listed circumstances is significant and one or two standing alone may tip the balance in favor of constructive custody (and require Miranda). But generally the sum of all these circumstances is reviewed together for the court's determination, hence the name of the test applied by the courts—"totality of circumstances".

#### WAIVER

If all the conditions which require Miranda are met (i.e., custody, felony, police initiated questioning of a suspect juvenile about evidence of his own guilt) then advice of the Miranda rights must be given. Once the rights are given, the next question has to do with the valid waiver of these rights. A juvenile can lawfully waive his Miranda (5th and 6th Amendment) rights by himself without the help or consent of his parents.<sup>71</sup> A juvenile may also assert his rights by stating he doesn't wish to answer questions without an attorney. If a juvenile requests the presence of someone else, for example, his probation officer, this is not taken to be a request for an attorney nor as an assertion of the juvenile's Fifth Amendment right. The U.S. Supreme Court has drawn a distinction between attorney's and probation officers.<sup>72</sup> However, it has not been decided in this jurisdiction whether a request for parents is an assertion of the Fifth and

Sixth Amendment rights under Miranda. A reading of the U.S. Supreme Court decision regarding a request for the presence of a probation officer does not resolve the question and those state appellate courts outside this jurisdiction which have faced the issue have divided on it.<sup>73</sup> Consequently, juvenile court judges in Virginia can also divide on the meaning of a request for parents.

If a juvenile does assert either his Fifth Amendment right or request to see counsel, his refusal to answer questions altogether or to answer questions in the absence of an attorney must be "scrupulously honored". The U.S. Supreme Court has recently decided that once the Miranda rights have been asserted, scrupulously honoring those rights means that the police may not again ask questions about the same crime even after the passage of time and after new Miranda warnings. Once the rights have been asserted it is apparently up to the juvenile to initiate any new questioning.<sup>74</sup>

A waiver of the Miranda rights must meet two legal requirements: 1) A waiver must be voluntary and 2) it must be knowing and intelligent. A voluntary waiver is one which is given of the juvenile's own free will. To be voluntary there can be no coercion or pressure such as physical abuse or psychological intimidation, threats, or trickery.

A knowing and intelligent waiver means that the juvenile understands what his Fifth and Sixth Amendment rights are and that he does not have to give them up. This means he must understand that he doesn't have to answer any questions asked by the police but that if he does his responses can (and will) be used against him in court. He must also understand that he can have an attorney present with him during questioning and that if he cannot afford an attorney the state will appoint one for him. Of course, the rights just stated are the Miranda rights. But the point of stating them is to demonstrate just what the juvenile does have to understand and no more. For example, a juvenile can give a knowing and intelligent waiver when he understands the just stated rights but does not understand all

the consequences of giving them up. He doesn't have to know that if he confesses he gives up certain trial rights and makes the prosecution's case much easier to prove.

The burden of proof of lawful waiver rests on the prosecution which must demonstrate a lawful waiver by a preponderance of evidence.<sup>75</sup> A preponderance of evidence is the usual standard of proof in a civil court and its functional equivalent in a criminal court is to demonstrate that it is reasonable to believe that the juvenile validly waived his rights. Of course, this is the standard known as probable cause.

How then would a juvenile court determine if the juvenile's waiver of his Miranda rights was voluntary and knowing and intelligent. Once again courts use the "totality of circumstances test" and would consider all of the same (eight) circumstances for juveniles used to determine if constructive custody existed.<sup>76</sup> Only, this time the context, i.e., the questions to be answered would be different even though the circumstances considered would be the same.

Place of the waiver is important. The police station is thought to be a more intimidating/coercive atmosphere than the home when it comes to voluntariness. At two p.m. one is less likely to be intimidated and more likely to make a knowing and intelligent waiver because he is fully awake and alert than if the time was two a.m.. A juvenile giving a waiver to one law enforcement officer is less likely to feel coerced than one who gives a waiver to three officers. A plain clothes police officer who politely and non-aggressively asks for a waiver is less likely to subject a juvenile to coercive pressure than several uniformed officers aggressively demanding a waiver. A waiver given after a short period of detention is more likely to be voluntary than one following lengthy detention. A juvenile is not incompetent to give a valid waiver by virtue of his age. But, like the case of constructive custody, those who are especially young, particularly thirteen or even fourteen and younger are most likely to not

make a knowing and intelligent waiver. It is probably essential in the case of the very young to be certain the parent or guardian is present when the warnings are given and waiver obtained. An older juvenile, one who is sixteen or seventeen, and who has had a number of experiences with the justice system is most likely to be considered to have given a voluntary and knowing and intelligent waiver. Younger juveniles, especially when they have had little or no experience with the justice system are less likely to be considered as having made a valid waiver.

Finally, what role do parents or guardians play in a valid waiver of the Miranda rights? Parental presence is probably the single most important circumstance in the totality of circumstances test. For this reason many law enforcement agencies, as standard operating procedure, require the presence of a parent or guardian. This is thought to better assure a valid waiver because it is assumed a parent or guardian will provide both psychological security and legal knowledge to the juvenile thus assuring the courts that the child was not coerced and understood the rights which he waived. This adult presence becomes increasingly important the younger the child is.

In fact it is known from experience that parents and guardians often do play such a supportive role. But it is also often the case that they may play a different role. Adults are often not any more knowledgeable about the Miranda rights than their children and do not contribute knowledge of the law to their children. Moreover parents may be as frightened or intimidated by the police as their children. Also they could be angry at their children and want to punish them for getting into trouble. Parents and guardians can be embarrassed by the fact that their children are in trouble and be anxious to cooperate. All of these latter examples can lead to pressure by the parents or guardian on the juvenile to waive his rights. And a child feeling this pressure may be anxious to exonerate himself in front of his parents and waive his rights. Parental presence is consequently not necessarily an automatic preventer

of a juvenile's waiver of his Miranda rights.

Two final points about a juvenile's Miranda rights have to do with the lawfulness of his custody and the consequences of a confession when a juvenile is transferred to adult (circuit) court and tried as an adult. When the arrest of TIIC of a juvenile is unlawful, any confession produced by that custody is not admissible. There are really no exceptions to this rule.

A juvenile who is fifteen at the time he allegedly committed a delinquency (felony) can, under certain circumstances, be transferred to a Virginia Circuit Court and tried as an adult which includes the potential of an adult sentence. Would it be important that the juvenile gave a confession following valid Miranda warnings and waiver but with the understanding that he confessed to a delinquent act (felony) which would be tried in a juvenile court? Some courts have felt this is significant. When the Virginia Supreme Court considered this issue it did so in the context of a juvenile who had considerable experience with the justice system. The High Court found that under those circumstances the juvenile was well aware of his rights including the possibility of more serious consequences.<sup>77</sup> What the decision might have been had the juvenile had little or no justice system experience is not known. Some courts outside this jurisdiction have adopted a position that under the latter circumstances, the police should include in the Miranda warnings advice that the juvenile's statements could be used in an adult court as well as a juvenile one. Such advice would seem to be helpful under the totality of circumstances test when considering whether the waiver was knowing and intelligent.

## FOOTNOTES

1. Va. Code, sec. 16.1-227.
2. Commonwealth of Va. State of the Judiciary Report 1980, Office of the Executive Secretary of the Supreme Court of Va., Richmond, 1981, p.12.
3. Ibid., p.11.
4. Va. Code, sec. 16.1-243.
5. Law v. Commonwealth, 75 Va. 885 (1881)
6. Va. Code, sec. 16.1-241 (L).
7. U.S. v. Johnson, 141 F. Supp. 641 (E.D. Va., 1956).
8. Va. Code, sec. 16.1-241 (L).
9. Ibid, 16.1-285.
10. Ibid, 16.1-242.
11. Note 2,
12. See Va. Code, secs. 16.1-228 and 16.1-241 for full statutory definitions of subject matter jurisdiction.
13. Va. Code, sec. 16.1-228 (F).
14. Ibid, 16.1-241 (I).
15. Ibid, 16.1-241 (J)
16. Ibid.
17. Ibid, 161-244
18. Ibid, 16.1-228 (K) and (P).
19. Ibid, 16.1-228 (S).
20. Ibid, 16.1-241 (G)
21. Ibid, 16.1-241 (R) and (D).
22. Ibid, 16.1-256 (3)
23. Ibid, 16.1-248.9.
24. Ibid, 16.1-256 (3)
25. Ibid, 16.1-246.

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20. Ibid, 16.1-241 (G)
21. Ibid, 16.1-241 (B) and (D).
22. Ibid, 16.1-256 (3)
23. Ibid, 16.1-248.9.
24. Ibid, 16.1-256 (3)
25. Ibid, 16.1-246.

26. Ibid, 16.1-246 (B)
27. Ibid, 63.1-248.9.
28. Ibid, 16.1-246, 256.
29. Ibid, 16.1-260 (C)
30. Ibid, 16.1-256 (2)
31. Ibid, 16.1-256 (3)
32. Ibid, 16.1-246 (A)
33. Ibid.
34. Ibid.
35. Ibid, 16.1-247 (A)
36. Ibid, 16.1-249 (B)
37. Ibid, 16.1-248
38. Ibid.
39. Ibid, 16.1-250
40. Ibid, 63.1-248.10
41. Ibid, 63.1-248.11
42. Ibid, 63.1-248.13
43. Ibid, 63.1-248.14
44. Ibid.
45. Ibid, 16.1-254
46. S. J. Fox, The Law of Juvenile Courts in a Nutshell, St. Paul, West, 1977 at p.128 and S. M. Davis, Rights of Juveniles: The Juvenile Justice System, 2nd Ed., New York, Clark Boardman, 1980 at p.3-69.
47. Stovall v. Denno, 388 U.S. 293 (1967)
48. Kirby v. Ill., 406 U.S. 682 (1972)
49. U.S. v. Wade, 388 U.S. 218 (1967).
50. Va. Code, 16.1-300

51. Ibid, 16.1-301
52. Ibid, 16.1-302, 303, 304, 305 and 307
53. For example, see Va. Code sec. 16.1-309.1
54. Ibid, 16.1-301
55. Ibid, 16.1-301 B 2, 3 and 5
56. Ibid, 16.1-301 (C)
57. Ibid.
58. Ibid, 16.1-309
59. Ibid, 16.1-306
60. Ibid, 16.1-306 (F)
61. Fox, p.123.
62. Davis, p.3-32.
63. Fox, p.124 and Davis p.3-32.
64. Reeves v. Warden, 346 F 2d. 915 (CA4, 1965); U.S. v. Block, 590 F 2d. 535 (CA 4, 1978); U.S. v. Peterson, 524 F 2d. 167 (CA 4, 1975), cert. den. 96 S. Ct. 1136.
65. See note 64.
66. State v. Baccino, 282 A. 2d 869 (Del., 1971); Doe v. S., 54 P. 2d 827 (N.M., 1975).
67. Doe v. Renfro, 475 F. Supp. 1012 (N.D. Ind, 1980), rev'd in part on other grounds, 27 CRL 2448 (CA 7, 1980); Jones v. Latexo Independent School District, 28 CRL 1015 (E. D. Tex., 1980); Horton v. Goose Creek Independent School District, 31 CRL 2235 (CA 5, 1982).
68. Horton, note 67.
69. Fox, p.111 and Davis p.3-52
70. Clay v. Riddle, 541 F 2d 456 (CA4, 1976).
71. Fare v. Michael C., 99 S. Ct. 2560 (1979).
72. Ibid.
73. Davis, pp.3-66,62.

- 74. Edwards v. Ariz., 29 CRL 3037 (1981).
- 75. Lego v. Twoney, 404 U.S. 477 (1972).
- 76. Green v. Commonwealth, 292 S. E. 2d 605 (1982).
- 77. Harris v. Commonwealth, 217 Va. 715 (1977).

APPENDIX A  
Glossary - Taken from the Juvenile  
and Domestic Relation's Courts Intake  
Manual dated March 1, 1982.

B. GLOSSARY OF TERMS

1. Abandon: To desert, surrender, forsake, or sede. Withdrawal or neglect of parental duties. Separation from child and failure to supply its needs, or relinquishment of parental claims.  
Blacks Law Dictionary
2. Abduction: The offense of taking away a wife, child, or ward by fraud and persuasion or open violence. Also to take away surreptitiously by force in kidnapping, or the unlawful taking or detention of any female for purposes of marriage, concubinage, or prostitution.  
Blacks Law Dictionary
3. Abode: One's home, habitation, place of dwelling, or residence. Living space impermanent in character.  
Blacks Law Dictionary
4. Abscond: To hide, conceal or absent oneself clandestinely, with the intent to avoid legal process.  
Blacks Law Dictionary
5. Abused or Neglected Child: Any child whose parents or other persons responsible for his care: (1) creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, (2) neglects or refuses to provide care necessary for his health, (3) abandons such child, (4) commits or allows to be committed any sexual act upon a child in violation of the law.  
Code of Virginia
6. Accessory: Contributing to or aiding in the commission of a crime, either before or after the fact or commission.  
Blacks Law Dictionary
7. Accomplice: A person who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of a crime.  
Blacks Law Dictionary

8. Accused: The person against whom accusation is made; one who is charged with a crime or traffic infraction.  
District Court Clerks Manual
9. Acknowledgement: To admit, affirm, declare, testify, avow, confess, or own as genuine; implying obligation or incurring responsibility. Avowal or admission that the child is ones own; recognition of a parental relation either by a matter or agreement, verbal declaration or any other satisfactory evidence that the relation was recognized and admitted.  
Blacks Law Dictionary
10. Acquittal: The legal and formal certification of the innocence of a person who has been charged with a crime.  
Blacks Law Dictionary
11. Adjudicate: To pass on judicially, to decide, settle, or decree.  
District Court Clerks Manual
12. Admissible: Pertinent and proper to be considered in reaching a decision. Refers to the evidence considered in determining the issues to be decided in any judicial proceedings.  
District Court Clerks Manual
13. Affiant: The person who makes and signs an affidavit.  
District Court Clerks Manual
14. Affidavit: The written, printed, or video tape declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before an officer having the authority to administer such an oath.  
District Court Clerks Manual
15. Affirm: To ratify, make firm, confirm, establish, reassert. Alternate procedure to swearing under an oath.  
District Court Clerks Manual
16. Aftercare: Services including counseling which are offered children and their families from the point at which a child is committed to the state Board of Corrections until such time as the child is discharged.  
Minimum Standards for Court Services

17. Aid to Dependent Children - (ADC): Money payments, on behalf of a dependent child to the relative with whom he is living, or vendor payments on behalf of such child or others included in the assistance payment.

Code of Virginia

18. Alias: A name indicating one was called by one or the other of two names.

Blacks Law Dictionary

19. Alleged: That which is stated, asserted, recited or charged.

20. Amend: To improve or to change for the better by removing defects or faults.

21. Appeal: The complaint to a superior court of an injustice done or error committed by a lower court, whose judgment or decision the high court is called upon to correct or reverse.

22. Arraign: Arraignment of an accused consists of calling upon him by name, reading to him the charges in the arrest documents, demanding of him whether he pleads guilty or not guilty, or in misdemeanors, nolo contendere, and entering his plea.

23. Arrearage: Money unpaid at the due time (Court Ordered support payments which are in arrears constituting an arrearage).

Blacks Law Dictionary

24. Arrest: To deprive a person of his liberty by legal authority.

District Court Clerks Manual

25. Assault: An intentional, unlawful offer of corporal injury to another by force, or force unlawfully directed toward another person under such circumstances as create well-founded fear of imminent peril, coupled with apparent present ability to execute attempt, if not prevented.

Blacks Law Dictionary

26. Attempt: In civil matters and in cases other than criminal prosecutions an "attempt" ordinarily means an intent combined with an act falling short of the thing intended.

In criminal law it is the effort or endeavor to accomplish a crime, amounting to more than preparation or planning for it, which, if not prevented would have resulted in the full consummation of the act attempted.

Blacks Law Dictionary

27. Bail: The release of a person from legal custody by a written agreement that he shall appear at the time and place designated and submit himself to the jurisdiction of the court and observe the requirements set forth in the bond.

28. Battery: Any unlawful beating, or other wrongful physical violence or constraint, inflicted on a human being without his consent.

An unlawful touching of the person of another by the aggressor himself, or any other substance put in motion by him. The consummation of an unlawful assault.

Blacks Law Dictionary

29. Battery, Aggravated Sexual: Sexual abuse of a complainant less than thirteen years old, or such act accomplished against the complainant's will and, 1), the complainant is at least thirteen but less than fifteen, or 2), the accused causes bodily or mental injury to the complainant, or 3), the accused uses or threatens to use a dangerous weapon.

Code of Virginia

30. Battery, Sexual: Sexual abuse of a complainant against their will.

Code of Virginia

31. Bond: A certificate or evidence of a debt with the sum fixed as a penalty, which contains a written agreement binding the parties to pay the same, conditioned, however, that the payment of the penalty may be avoided by the performance by some one or more of the parties of certain acts.

District Court Clerks Manual

32. Breaking: Forcibly separating, parting, disintegrating, or piercing any solid substance. In the law as to house breaking and burglary, it means the tearing away or removal of any part of a house or the locks, latches or other fastenings intended to secure it, or otherwise exerting force to gain an entrance, with the intent to commit a felony; or violently or forcibly breaking out of a house after having unlawfully entered it, in the attempt to escape. Actual "breaking" involves application of some force...., the action of the accused must have been such as would, without additional effort, have made an entry possible. The slightest force is sufficient, as lifting or opening of a latch. But entry by open door, window, or other opening does not constitute "breaking".

Blacks Law Dictionary

33. Burglary: The breaking and entering the house of another in the night time, with intent to commit a felony therein, whether the felony be actually committed or not.

Blacks Law Dictionary

34. Capias: A type of arrest document issued by the Court charging the offender with a violation of a Court order or Court process for contempt of Court.

District Court Clerks Manual

35. Carnal Knowledge: Coitus; copulation; the act of a man in having sexual bodily connection with a woman; sexual intercourse. There is "carnal knowledge" if there is the slightest penetration of the sexual organ of the female by the sexual organ of a male. It is not necessary that the vagina be entered or the hymen be ruptured; the entering of the vulva or labia is sufficient.

Blacks Law Dictionary

Sexual intercourse without the use of force with a child thirteen years of age or older but under fifteen years of age.

Code of Virginia

36. Carrying Away: The act of removal or asportation, by which the crime of larceny is completed, and which is essential to constitute it.

Blacks Law Dictionary

37. Child: "Juvenile" or "Minor". A person less than eighteen years of age.

Code of Virginia

38. Circuit Court: Court of record in each Virginia locality which hears appeals from Juvenile & Domestic Relations Court; in addition it has original jurisdiction over such matters as divorce and adoption.

39. Cohabitate: Dwelling together. Living or abiding or residing together as man and wife.

Blacks Law Dictionary

40. Common Law: As distinguished from law created by the enactment of legislation of legislatures, the common law comprises the body of those principles and rules of action relating to the government and security of persons and property which derive their authority solely from usages and customs immemorial antiquity, or from the judgments, and decrees of the Courts recognizing, affirming and enforcing such usages and customs and in that sense particularly the ancient and unwritten law of England.

41. Commonwealth's Attorney: The name of the public officer who is elected in each city or county to conduct criminal prosecutions on behalf of the state.

District Court Clerks Manual

42. Complaint: In criminal law, a charge with an offer to prove the fact to the end that a prosecution may be instituted.

Blacks Law Dictionary

43. Conceal: To hide; secrete; withhold from the knowledge of others; to withdraw from observations; to withhold from utterance or declaration, to cover or keep from sight.

Blacks Law Dictionary

44. Consent: A concurrence of wills. Voluntarily yielding the will to the proposition of another; acquiescence or compliance therein.

Blacks Law Dictionary

45. Contempt of Court: Any act which is calculated to embarrass, hinder, or obstruct the court in administration of justice, or which is calculated to lessen its authority or its dignity.

Blacks Law Dictionary

46. Convict: To find a man guilty of a criminal charge; to condemn after judicial investigation.

Blacks Law Dictionary

47. Court Order: A command or mandatory direction of a judge which is authoritatively given. Also includes a command of the judge which establishes courtroom or administrative procedures.

48. Crime: A positive or negative act in violation of penal law; an offense against the state classified either as a felony or misdemeanor.

Blacks Law Dictionary

49. Cross Examination: The examination of a witness upon a trial or hearing, or upon taking a deposition, by the party opposed to the one who put him on the witness stand to testify.

Blacks Law Dictionary

50. Defendant: The party against whom relief or recovery is sought in a court action or suit. Sometimes used to designate the accused in criminal or traffic cases.

Blacks Law Dictionary

51. Discretion: Power or privilege of the court to act unhampered by legal rule.

In criminal law and the law of torts, it means the capacity to distinguish between what is right and wrong, lawful or unlawful, wise or foolish, sufficiently to render one amenable and responsible for his acts.

Wise conduct and management; cautious discernment, especially as to matters of propriety and self-control; prudence; circumspection; wariness.

Blacks Law Dictionary

52. Dismissal: An order disposing of an action, suit, etc.

53. Disposition: Determination of the final arrangement or settlement of a case following judgment.

54. Divorce: The legal separation of man and wife effected, for cause, by the order of a circuit court and either totally dissolving the marriage bond or suspending its effects so far as concerns cohabitation of the parties. There are two kinds of decrees of divorces:

a mensa et thoro: from bed and board; a partial or qualified divorce by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself.

a vinculo matrimonii: total divorce of husband and wife, dissolving the marriage tie, and releasing the parties wholly from their matrimonial obligations.

Blacks Law Dictionary

55. Docket: To make a brief entry of any court proceeding. A minute, abstract, or brief entry in the book containing such entries.

Blacks Law Dictionary

56. Due Process of Law: Law in its regular course of administration through courts of justice. Due process in each particular case means such an exercise of the powers of the government as the settled maxims of law permit and sanction, and under the safeguards for the protection of the individuals rights.

Blacks Law Dictionary

57. Emancipation: The term is principally used with reference to the emancipation of a minor child by its parents, which involves an entire surrender of the right to the care, custody, and earnings of such child as well as a renunciation of parental duties.

Blacks Law Dictionary

58. Entry: The act of making or entering a record; a setting down in writing of particulars.

In criminal law, "entry" is the unlawful making one's way into a dwelling or other house for the purpose of committing a crime therein.

Blacks Law Dictionary

59. Escape: The departure or deliverance out of custody of a person who was lawfully imprisoned, before he is entitled to his liberty by the process of law.

Blacks Law Dictionary

60. Evidence: Any species of proof legally presented at the trial of an issue by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention.

Blacks Law Dictionary

61. Ex Parte: A judicial proceeding, order, injunction, etc., is said to be ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to any person adversely interested.

Blacks Law Dictionary

62. Expunge: Means to destroy or obliterate; it implies not a legal act, but a physical annihilation.

Blacks Law Dictionary

63. Extradition: The surrender by one state to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.

Blacks Law Dictionary

64. Fact: A thing done; an action performed or an incident transpiring; an event or circumstance; an actual occurrence.

Blacks Law Dictionary

65. Family: For jurisdictional purposes, it shall include husband and wife, parent and child, brothers and sisters, grandparent and grandchild, regardless of whether such persons reside in the same home.

Blacks Law Dictionary

66. Felony: A crime punishable by death or confinement in the penitentiary. See Section 18.1-10 for classification of felonies and the punishment for each classification.

67. Finding: The result of the deliberations of a court.

68. Foster Care: The provision of substitute care and supervision, for a child committed or entrusted to a local board of public welfare in a temporary living situation until the child can return to his or her family or be placed in a permanent foster care placement or in adoptive home.

69. Foster Care Plan: Report required by law to be filed with the juvenile and domestic relations court which committed a child to the custody of the local department of social services; it is subject to periodic review and sets forth goals and objectives for the child, family, and local department along with methods of achievement.

70. Garnishment: A statutory proceeding resorted to as a means of obtaining satisfaction of judgment by reaching assets of a debtor; procedure may be used to satisfy a judgment for arrearages.

71. Guardian Ad Litem: A lawyer appointed to defend or prosecute a case on behalf of a party incapacitated by infancy or otherwise.

72. Guilty: Responsible for committing a criminal offense or a traffic infraction. The word used by the accused in pleading to the charges when he confesses to committing the crime of which he is charged. It is also used by the judge if he finds that the accused committed a criminal offense or a traffic infraction.

73. Habitual: Generally, as it relates to CHINS, reference is made to a course of conduct or behavior which has existed for a certain period of time or an event or events which have occurred a certain number of times; specifically, local policy will dictate proper application and definition.

74. Incarceration: Imprisonment, confinement in a jail or penitentiary.

75. Incorrigible: Incapable of being corrected, amended, or improved; with respect to juvenile offenders, unmanageable by parents or guardians.

Blacks Law Dictionary

76. Indigent: In a general sense, one who is needy and poor, or one who has insufficient property to furnish him a living nor anyone able to support him or to whom he is entitled to look for support.

Blacks Law Dictionary

77. Institution: Colloquial term for a learning center which provides residential treatment, custody, and care programs for juveniles committed to the State Board of Corrections.

78. Intent: Shows the presence of will in the act which consummates a crime. It is the exercise of intelligent will, the mind being fully aware of the nature and consequences of the act which is about to be done, and with full liberty of action, will and electing to do it.

Blacks Law Dictionary

79. Judicial Certification: Process by which the court determines a mentally retarded person's eligibility for admission to a treatment facility.

80. Jurisdiction: The authority of a court or other governmental agency to adjudicate controversies brought before it.

Original: The court of first instance which has the exclusive right to render a binding judgment.

Concurrent: Shared with another court or locality.

81. Juvenile: Person under the age of eighteen.

82. Larceny: The stealing, taking and carrying away the property of another without consent with the intent to permanently deprive the owner of his property.

(Note: Grand larceny is larceny of goods in excess of \$200.00 and is a felony.

Petit larceny is larceny of goods valued at less than \$200.00 and is a misdemeanor.

Larceny from the person is the larceny of goods from the person of another valued in excess of \$5.00 and is a felony.)

83. Lien: A legal claim on property for payment of some debt, obligation, or duty.
84. Loco Parentis: In the place of a parent; a responsible adult charged with a parent's rights, duties, and responsibilities.
85. Magistrate: Judicial official with certain limited powers; in Virginia their primary functions include the writing of arrest warrants, setting bail, accepting bonds, and issuing search warrants.
86. Mentally Ill: A juvenile who after a judicial hearing is found to be substantially incapable of caring for himself, or a threat to himself or others.
87. Minor: An infant or person who is under the age of legal competence. One under eighteen.
88. Misdemeanor: Offenses punishable by fine not exceeding \$1,000.00 or being jailed for a term not exceeding twelve months or a combination of fine and jail within these limits. See Va. Code Section 18.2-11 for classification.
89. Motion: A request made to the judge by a litigant or other person connected with the case for a ruling or order.
90. Necessitous Circumstances: For support purposes, this situation exists when a spouse or family or both, to whom a legal obligation of support is owed, is determined to be without necessities, such as food, clothing, housing, or medical attention.
91. Nolle Prosequi: A formal entry by the prosecuting officer in a criminal action, by which he declares that he "will no further prosecute" the case.

Blacks Law Dictionary

92. Notary: A public officer whose function it is to administer oaths; to attest and certify certain classes of documents; to take acknowledgments, and certify the same.
93. Offense: A crime or misdemeanor, a breach of the criminal laws.

Blacks Law Dictionary

94. Ordinance: The enactments of the legislative body of a local government.  
Blacks Law Dictionary
95. Parole: In criminal law. A conditional release; condition being that, if prisoner makes good, he will receive an absolute discharge from balance of sentence, but, if he does not, he will be returned to serve unexpired time.  
Blacks Law Dictionary
96. Pendente Lite: Pending the suit; during litigation; during the actual progress of a suit.  
Blacks Law Dictionary
97. Permanent Foster Care: The placement in which a child has been placed with the expectation and agreement between the placing agency and the permanent foster parents that the child shall remain in their home until he reaches the age of majority unless modified by court order.
98. Petition: A document filed at court intake stating that a juvenile is delinquent, is in need of services, or is an abused or neglected child, and asking that the court assume jurisdiction over the juvenile. A petition is similar to a warrant filed on an adult.
99. Plaintiff: A person who brings an action; the party who complains or sues in a personal action and is so named on the record.  
Blacks Law Dictionary
100. Plea: Statement made by the defendant either as to his guilt or innocence to the charge made against him.
101. Preliminary Hearing: Hearing held prior to actual trial in which a juvenile is informed of his legal rights, including the right to an attorney, and notified of the charges pending against him.
102. Probable Cause: A reasonable ground for belief in the existence of facts warranting the proceedings complained of (e.g., probable cause to believe that a crime has been committed and that the person accused may have committed it.)  
Blacks Law Dictionary
103. Property: More specifically, ownership; the unrestricted and exclusive right to a thing; the right to dispose of a thing in every legal way, to possess it, to use it, and to exclude everyone else from interfering with it.

Personal Property: In broad and general sense, everything that is the subject of ownership, not coming under denomination of real estate.

Real Property: Land, and generally whatever is erected or growing upon or affixed to land.

Blacks Law Dictionary

- 104. Protective Services Worker: A social worker assigned by a local department of social services to investigate and take appropriate legal action concerning complaints of child abuse and neglect; services available on a twenty-four hour basis.
- 105. Purview: To come under the control, scope, or extent of, such as an act or bill, the design purpose or scope of the act.
- 106. Putative Father: The alleged or reputed father of an illegitimate child.
- 107. Rape: Sexual intercourse with a female against her will, by force, threat, or intimidation, or through the use of the female's mental incapacity or physical helplessness, or sexual intercourse with a female child under age thirteen.

Code of Virginia

- 108. Recognizance: Release of a defendant from jail or arrest by a judicial officer, upon the promise to appear in court without the necessity of posting bond.
- 109. Referral: When an intake officer determines that the facts and circumstances of a particular complaint do not warrant the filing of a petition, another more appropriate agency may be requested to provide services to the juvenile or the complainant or both.
- 110. Remand: The sending the cause back to the same court out of which it came, for purpose of having some action on it there.

Blacks Law Dictionary

- 111. Residual Parent Rights: 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.
- 112. Restitution: The act of making good or giving equivalent for any loss, damage, or injury.

Blacks Law Dictionary

- 113. Return: The act of a sheriff, constable, or other ministerial officer in delivering back to the court a writ, notice, or other paper, which he was required to serve or execute, with a brief account of his doings under the mandate, the time and mode of service or execution, or his failure to accomplish it, as the case may be. Also the endorsement made by the officer upon the writ or other paper, stating what he has done under it, the time and mode of service, etc.

- 114. Revocation: The recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existed until the act of revocation made it void.

Blacks Law Dictionary

- 115. Secrete: To conceal or hideaway.

Blacks Law Dictionary

- 116. Service of Process:
  - Publication: Service of a summons or other process upon an absent or non-resident defendant, by posting a notice on the courthouse door, and unless dispensed with by the judge, by publishing the same as an advertisement in a designated newspaper, with such other effort to give him actual notice as the particular statute may prescribe.
  - Personal: Service of a summons or other process made by delivering it in person to the person named in the process.
  - Substitute: Service of a summons or other process by any means authorized by statute other than by personal service. These include service by publication, posted service, service on alternative individual as authorized by statute.

- 117. Sexual Penetration: (Inanimate Object): Penetration of the labia majora or anus of the complainant with any object, or causing the complainant to engage in such acts and 1), the complainant is less than thirteen years of age, or 2), the act is accomplished against the complainant's will.

- 118. Shelter Care: The temporary care of children in physically unrestricting facilities.

119. Show Cause Rule: A court ruling directing the recipient to appear and present to the court such reasons and considerations as one has to offer why the recipient should not be punished for violating a court order or legal process or for contempt of court.
120. Sodomy: To engage in unnatural sex acts; considered forcible when the complainant is less than thirteen years of age or the act is accomplished against the complainant's will.
- Code of Virginia
121. Statute: An act of the General Assembly declaring, commanding, or prohibiting something.
- Blacks Law Dictionary
122. Steal: This term is commonly used in indictments for larceny, ("take, steal, and carry away,") and denotes the commission of theft, that is, the felonious taking and carrying away of the personal property of another, and without right and without leave or consent of owner.
- Blacks Law Dictionary
123. Subpoena: A process to cause a witness to appear and give testimony, commanding him to appear before a court therein named at a time therein mentioned to testify for the party named under a penalty therein mentioned.
- Blacks Law Dictionary
124. Subpoena Duces Tecum: A process by which the court, at the insistence of a party to an action, commands a witness who has in his possession or control some document or paper that is pertinent to the issues of a pending controversy, to produce it at or before the trial.
- Blacks Law Dictionary
125. Summons: A document notifying defendant that an action has been instituted against him and that he is required to answer to it at a time and place named.
126. Supreme Court: Virginia's court of last resort; it hears appeals from circuit courts and among other things is responsible for the operation and administration of juvenile and domestic relations district court clerk's offices.

127. Tamper: To meddle so as to alter a thing, especially to make corrupting or perverting changes; . . .
- Blacks Law Dictionary
128. Traffic Infraction: Any violation of any provision of Chapters 1 through 4 of Title 46.1 Va. Code 1950 as amended, or of any ordinances, rules or regulations established thereunder.
130. Transfer Hearing: A hearing to determine whether a youth's case should be handled by the juvenile court or transferred to the circuit court for trial as an adult.
130. Trespass:
- a) Doing of unlawful act or of a lawful act in unlawful manner to injury of another's person or property.
  - b) A wrongful entry upon the lands of another.
131. Trial De Novo: A new trial or retrial had in an appellate court in which the whole case is retried as if no trial whatever had been had in the court below.
- Blacks Law Dictionary
132. Utter: To put or send (as a forged check) into circulation.
- Blacks Law Dictionary
133. Venue: "Venue" designates the particular county or city within which a court with jurisdiction may hear and determine the case.
- Blacks Law Dictionary
134. Verdict: The formal decision or finding of guilt or innocence made by a judge in a criminal case.
135. Waive: To abandon, renounce, repudiate or surrender a claim, a privilege, a right, or the opportunity to take advantage of some defect, irregularity, or wrong.
136. Warrant: A written order issued and signed by a judicial officer directed to a law enforcement officer or some other person specially named in it who is accused of an offense.

137. Weapon: An instrument of offensive or defensive combat, or anything used, or designed to be used, in destroying, defeating or injuring an enemy. Something to fight with.

The term is chiefly used, in law, in the statutes prohibiting the carrying of "concealed" or "deadly" weapons.

Blacks Law Dictionary

138. Witness: One who testifies to what he has seen, heard, or otherwise observed and who is not a party to the action.

APPENDIX B

Information Pamphlet of the Virginia Juvenile and Domestic Relations District Court - Generally describing the court and its procedures.

*Virginia*

**JUVENILE AND  
DOMESTIC  
RELATIONS  
DISTRICT COURTS**

**INFORMATION  
PAMPHLET**



Office of the Executive Secretary  
Richmond, Virginia 23219

## The Juvenile and Domestic Relations District Court

### I. Generally

The Juvenile and Domestic Relations Court handles cases involving:

- delinquents
- juveniles accused of traffic violations
- children in need of services
- children who have been subjected to abuse or neglect
- adults accused of child abuse or neglect, or of offenses against members of their own family (juvenile or adult)
- adults involved in disputes concerning the support, visitation or custody of a child.
- abandonment of children
- foster care and entrustment agreements
- court-ordered rehabilitation services
- court consent for certain medical treatments

In Virginia, a juvenile is any person under 18. A delinquent is a juvenile who has committed an act which would be a crime if committed by an adult. A "child in need of services" (CHINS) is a juvenile who has committed certain actions which, if committed by adults, would not be considered criminal offenses — such as truancy or habitually running away from home. Child abuse and neglect involves the improper care or violent handling of juveniles.

Juvenile courts differ from other courts in their duty to protect the confidentiality of all juveniles coming before the court, and in their commitment to rehabilitate or treat, rather than punish, those who come before the court. The welfare of the child and the family is the paramount concern in the court's proceedings. In other respects, juvenile courts have the same requirements and provide the same safeguards as other courts in the court system. This court does not, however, conduct jury trials. All cases are heard by a judge.

### Court Clerk:

Each court has a court clerk's office, which processes all case papers, keeps court records and provides information to the people involved in a case (but only to the extent

permitted by law). The court clerk's office also handles court-ordered support payments. Anyone wishing to make a witness appear at a court hearing may request the issuance of a subpoena (a document used to require a person to come to the court hearing) at the court clerk's office. While court personnel are not permitted to offer legal assistance, they can provide general procedural information. Because of confidentiality laws, the clerk's office can only provide very limited information about a case and then only to those people involved with the case.

### Court Service Unit:

Associated with the Juvenile and Domestic Relations District Court is a court services unit, sometimes called the probation department, which serves the court and facilitates the rehabilitation or treatment of those who come before the court. The court services unit's functions include:

- *Intake.* Reviews all complaints and determines whether there are sufficient facts to invoke the court's jurisdiction. If so, the intake officers may either proceed informally to make adjustments as are practical without the filing of a petition or he may authorize the filing of a petition to bring the matter before the judge. Intake does not handle those criminal charges against adults which are started by obtaining a warrant from a magistrate.
- *Investigation.* Conducts all background studies required by the court, such as examination of a juvenile's social and educational background.
- *Probation.* Supervises delinquent juveniles and children in need of services released into home probation and supervises adults released on probation in support and other cases involving the defendant's relation with family members and individuals to whom he has a support duty.
- *Aftercare.* Supervises juveniles recently released from state institutional care.
- *Domestic Care.* Supervises juveniles being held in detention or shelter care homes. In some localities, the staff of these facilities are independent of the local court service unit.

The intake officer can further explain the procedures of The Juvenile and Domestic Relations District Court at intake.

### Other Agencies:

Welfare and social service agencies are in frequent con-

contact with the court in certain types of cases. They perform the initial investigation in abuse and neglect cases. Children may be committed to such agencies when they are removed from home. Other agencies provide such services as may be ordered by the court.

### Lawyers:

The right to be represented by a lawyer in this court extends to:

- Children involved in delinquency cases.
- Children in need of services.
- Abused and neglected children.
- Any child who is the subject of a custody, visitation or support controversy.
- Adults before the court on criminal charges.
- Adults faced with loss of their parental rights.
- All other persons whom the court feels require a lawyer's services.

The court appoints a *guardian ad litem* (a lawyer who protects the child's best interests) to represent all children alleged to be abandoned, neglected, abused or dependent who are the subject of an entrustment agreement (in which the parents give up their parental rights and transfer care and custody of the child to an agency), a court proceeding to terminate residual parental rights (for all rights and responsibility for the child), or whose parents desire to be relieved of care and custody of the child. A *guardian ad litem* is a lawyer designated to represent a person's interests in legal actions involving that child.

Adults and juveniles who can afford to do so must pay the costs of their own lawyer. Those who cannot afford a lawyer must sign a sworn statement showing their indigence (lack of money) in order to receive a court-appointed lawyer. However, a lawyer will be appointed for adults only in criminal cases, abuse and neglect cases, and termination of residual parental rights cases. Parents or guardians of children or other adults receiving a court-appointed lawyer who, upon further investigation, are found able to pay will be charged the costs of the lawyer's services. Use of a lawyer is not required in all cases; the right to a lawyer may be waived by the accused except when the interests of the accused juvenile and his parents are in conflict.

Those who wish to retain their own lawyer, but who do not know a lawyer, may obtain the name and phone number of a local lawyer from The Virginia State Bar Referral Service by calling the following toll-free number: 800-522-7977.

Those who want to hire a lawyer and have not had time to do so should ask for a postponement for that purpose. When appearing before the judge, this matter should be brought up immediately before the hearing starts.

Court personnel are not lawyers and are not permitted or allowed to offer legal advice. Legal questions should be addressed to competent attorneys only.

### Petition, Summons and Warrants:

A petition is a legal paper containing the written statement which brings the case involving juveniles into court. The petition contains facts concerning the case and requests a hearing to determine the truth of these facts and to take whatever action is appropriate and permitted by law.

A summons is a legal paper requiring a person to appear in court at the date and time stated on the summons. The petition is delivered with the summons to those people who are required to be in court as parties in the case. No petition is required when a juvenile is arrested and released on a summons written by an arresting officer. A subpoena is a legal paper delivered to witnesses who are required to be in court, telling them when and where they are required to appear. A warrant is a legal paper accusing a person of committing crimes, requiring that the person be arrested, be brought before a magistrate (for adults) or an intake officer (for juveniles) for a pre-trial release hearing, and be required to appear in court to answer the accusations.

### When Called to Court:

All persons required to appear before the Juvenile and Domestic Relations District Court should arrive on time, at the time and place stated on the petition, summons, warrant or subpoena. It is important that everyone involved in a case be ready when the case is called into the courtroom. Though the wait may seem long, everyone must remain until the case is called; to do otherwise is a criminal offense. The court does not have a babysitting service; therefore, the only children who should be brought to court are those children involved in the case or whose presence has been requested or required by the court, an attorney or a probation officer.

### Confidentiality:

A juvenile or adult being tried in this court charged

with committing a criminal act or traffic infraction has the right to a public trial; this right may, however, be given up in favor of a trial that is closed to the public. All other trials are closed to the public. Court reports and records are open only to those specifically permitted by law to have such access. Court officials or others who violate this confidentiality requirement are subject to criminal penalties.

## II. Juvenile Delinquency and CHINS Cases

### Detention or Shelter Care

A child may be taken into custody if he/she commits a crime in a police officer's presence, if the police officer believes that he/she committed a felony, or if a judge, intake officer, or clerk (when authorized by the judge) issues a detention order requiring an arresting officer to take a child into custody. If not immediately released by an intake officer or magistrate, the child is held in custody (detention) until being brought before a judge or other court official for a detention hearing. This hearing must occur within 72 hours of the taking of the child into custody.

The detention hearing is not a trial, but merely a hearing to determine whether detention of the child should be continued. If the judge decides that a child is to be released from detention, he also decides who shall have custody and who shall be responsible for the child until trial. Also, the judge decides whether or not the child is to be restricted or be required to do certain things until the trial. He may also require a bond to be posted. The juvenile can be further held in a secure place only if he is charged with being a delinquent child. Detention will be continued only if the child is a threat to himself or the community, no parent or other suitable person is able and willing to supervise and take care of the child or the child's life or health would be placed in danger if he is released. Prior notice of the detention hearing must be given to the child's parent or guardian, and to the child if he/she is over 12. The child has the right to be represented by a lawyer at the detention hearing, the right to remain silent concerning the accusation of delinquency, and to be informed of the contents of the petition.

While the child is in a detention home or shelter placement, parents or guardians wishing to visit may do so only during permitted visiting hours, which are usually re-

stricted. Parents or guardians should find out in advance of a visit the hours when visitation is permitted.

### Transfer to Circuit Court for Trial as an Adult:

A case involving a juvenile 15 or older accused of a felony may be transferred to the appropriate circuit court where the juvenile will be tried as an adult. This proceeding is started by the Commonwealth's Attorney (the prosecutor), but only the judge makes the decision whether or not to transfer the case. Prior to such transfer, a hearing must be held to determine if the child was at least 15 at the time of the alleged offense, if there is probable cause to believe that the child committed the offense, and if the court believes that the child cannot be controlled, treated or rehabilitated by juvenile facilities.

Prior notice of the transfer hearing must be given to the child's parent or guardian. Juveniles have the right to be represented by a lawyer at a transfer hearing. Statements made at the transfer hearing are not permitted to be used as evidence of the offense in any later court hearings but may be used later to challenge the truth of other testimony which may be given by the juvenile. If the case is not transferred, the judge who presided at the transfer hearing may try the case unless one of the parties object.

### Traffic Cases

Cases involving juveniles accused of traffic violations are heard by the Juvenile and Domestic Relations District Court. Certain violations called prepayable traffic infractions may be prepaid at the clerk's or magistrate's office if prepayment is permitted by the chief judge and if the juvenile wishes to plead guilty and not contest the charge. The traffic summons should be examined to see if the arresting officer has marked that trial may be waived (given up) to permit prepayment. If prepayment is permitted, the clerk's or magistrate's office should be called to find out the fine and costs and to find out where to mail or deliver the signed Waiver of Trial form (on back of summons) with the fine and costs. The telephone number for the clerk's office appears on the summons or in the telephone directory under the listing for the city or county government.

### Preliminary Hearings

Adults charged with committing felonies (except mur-

der and manslaughter) against children or family members are brought into Juvenile and Domestic Relations District Court after arrest for a preliminary hearing. This hearing is held to determine if there is probable (reasonable) cause to believe that the accused adult committed the felony. If probable cause is found, the case is transferred to circuit court; otherwise, the case is dismissed.

### Adjudicatory Hearing (Trial):

The actual trial in juvenile cases is called the adjudicatory hearing. It is at the adjudicatory hearing that the judge determines whether the facts as stated in the petition are true. The judge may temporarily postpone a case to allow all parties time to obtain a lawyer or for any other reason needed to have a fair trial. Persons accused of crimes or delinquency have the following rights at the adjudicatory hearing:

- The right to be represented by a lawyer to the extent provided by law.
- The right to have witnesses to appear on their behalf.
- The right to subpoena (to require to come to court) witnesses to appear.
- The right to confront and cross-examine (question) witnesses testifying against them (accusers).
- The right against self-incrimination. (A person cannot be required to answer questions or make statements tending to show one's guilt and have them used against him or her.)

During the adjudicatory hearing in delinquency cases, all charges must be proven beyond a reasonable doubt before guilt is established. If the judge finds the juvenile to be guilty, the case is usually continued to another day for the judge to make a disposition decision (sentencing). The disposition decision is not always made immediately because the judge may require information about all aspects of the child's background, including prior offenses and personal history, before determining what corrective measures to take with the child. Dispositions in traffic cases, however, are usually made immediately at the end of the adjudicatory hearing.

Adult criminal and support cases in the Juvenile and Domestic Relations District Court are tried with the same standards and procedures as are applied in misdemeanor cases in General District Court, where most other adult misdemeanors are tried. Adult criminal cases generally involve offenses committed against children or family

members. Support cases involve an adult's failure to provide support to those whom he owes a duty to support.

There is no jury trial in this court. A case must be transferred or appealed to circuit court to obtain a jury trial.

### Disposition:

The juvenile judge has a wide range of alternatives to choose from in selecting a disposition in cases involving juveniles. The judge's choice depends greatly upon the individual's prior record, social history, physical and mental condition, environmental circumstances at home, the facts and circumstances of the acts for which the individual was convicted, including the seriousness of the offense, and other factors which help the judge determine the best disposition for the child.

If the child is placed on probation under the supervision of a probation counselor, the child and the child's parents must cooperate with the probation counselor and abide by the conditions of probation made by the court at the time of disposition. The child's parents may also be ordered by the court to participate in counseling programs or to receive other treatment that the court may prescribe. Parents or guardians violating conditions contained in the court order may be subject to contempt of court charges; probation violations by a child may result in a more severe disposition. A jail term may be imposed only if a child is 15 years old or over, is convicted of committing a felony or misdemeanor, and if the interests of the community require such restraint as determined by the judge.

### Expungement (Destruction of Court Records):

Records of juveniles found by the court to be delinquent (except felonies) or in need of services must be destroyed after the person has reached 19 and after 5 years have elapsed since the last hearing involving the person was handled by the courts; felony delinquent cases are sealed at that time and are destroyed only after 20 years have passed since the last hearing involving him or her was handled by the Juvenile and Domestic Relations District Court. Sealed records of felonies are accessible to a restricted group of persons for very limited purposes. If a juvenile is found innocent of a misdemeanor offense, he may ask in writing for early destruction of his records.

The right of expungement shall be further explained at the dispositional hearing to juveniles found to be delinquent or to be in need of services.

### III. Custody and Support

#### Custody:

Controversies over the custody or visitation of a child are usually heard in the Juvenile and Domestic Relations District Court. In cases involving issues of custody or visitation between parents regarding their child, the court will make any order necessary to protect the interests of the child and family.

Where a parent or guardian seeks to be relieved of the custody of any child or where a public or private agency seeks to be given custody of the child, the court shall grant such relief only if suitable placement for the child is available, if the child is in need of such placement and if placement of the child outside his present home will not detrimentally affect the child. The court will separate a child from his parents or guardian only when the child's welfare is endangered or separation is in the interests of public safety.

#### Support:

Under Virginia law, parents or spouses who fail in their obligations to support and maintain their dependents are subject to criminal charges, and may be required by the court to provide such support.

Any spouse or parent found by the court to have failed in his/her duty to provide support and maintenance is guilty of a misdemeanor, and is subject to a fine of up to \$500 and up to 12 months in jail. In place of or in addition to paying a fine and/or being sent to jail, a judge may at his discretion order the spouse to make certain periodic payments, in a manner prescribed by the court. The court may then release the negligent spouse or parent on the condition he/she comply with all conditions of the court's order. Any person receiving such an order who continues to fail to provide support in the manner ordered by the court, may be held in contempt of court and jailed. Persons summoned to court for court support who fail to appear will also be charged with contempt of court and are subject to immediate arrest; the support hearing will continue in his/her absence.

Virginia adheres to the Uniform Reciprocal Enforcement of Support Act, by which its support orders are enforced by other states, and by which other states' support orders are enforced in Virginia.

Support orders may be appealed to the appropriate circuit court; however, pending such an appeal, the spouse or parent is not relieved of the payment requirements of the court's orders as any order of support from the Juvenile and Domestic Relations District Court remains in full force and effect until changed on appeal by the circuit court.

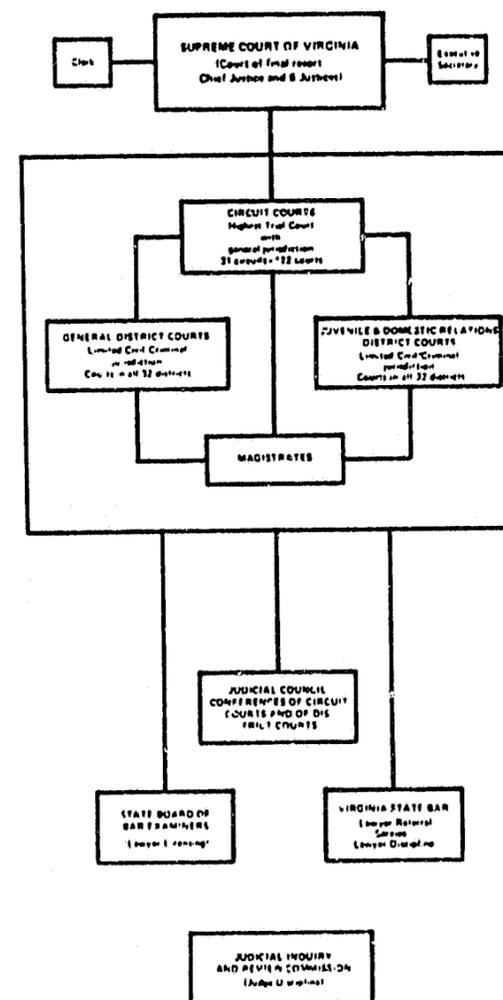
#### Appeals:

All parties subject to a court order or judgment may appeal the decision to the appropriate circuit court. Appeals must be noted with the clerk of this court within 10 days of this court's action by a party to the case or the party's attorney. Cases appealed to the circuit court are reheard *de novo* (completely new, from the beginning.) The child, the Commonwealth's Attorney, or the circuit court judge may request a trial by jury in the circuit court. In hearing cases on appeal from this court, the circuit court has the same power and authority as does this court.

Pending an appeal, judgments of the Juvenile and Domestic Relations District Court are suspended in delinquency, local ordinance or adult cases (except support or preliminary protective orders). Bond may be required when court judgments are suspended by appeals. Appeals of support decisions do not suspend the obligation to provide support.

IF YOU DO NOT UNDERSTAND WHAT IS GOING ON, DO NOT BE AFRAID TO ASK THE JUDGE OR OTHER COURT PERSONNEL FOR ANSWERS.

### THE VIRGINIA JUDICIAL SYSTEM



APPENDIX C

Selected Forms Used in the Virginia Juvenile and Domestic Relations Court

PETITION

VA. CODE ANN. § 16.1-263

Court File No. ....

COMMONWEALTH OF VIRGINIA IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT OF THE CITY/COUNTY OF

In re a Child under eighteen years of age

Form with fields for Child's Name, Date of Birth, Age, Sex, Address, Father's Name and Address, Mother's Name and Address, Guardian, Legal Custodian, and other relevant information.

PREPARE FOR SUMMONS

I, the undersigned petitioner, state under oath to the best of my knowledge, that the above-named child is within the purview of the Juvenile and Domestic Relations District Court Law in that, within this city/county, the child:

.....

WHEREFORE, the Petitioner requests that the child and the persons having his or her custody and control be summoned to appear before this Court, and that this Court enter such orders and judgments as the Court deems fit and proper in accordance with the law and which will serve the purpose and intent of the Juvenile and Domestic Relations District Court Law.

Signature and date fields for the petitioner and the official.

SUMMONS

Form with fields for Time of Appearance, Court's Street Address and Telephone.

TO ANY SHERIFF OR POLICE OFFICER OR I COMMAND YOU to summon the parties as designated in the above petition.

TO THE PERSON SUMMONED: I COMMAND YOU to appear in person before this Court at the date, place and time specified in this Summons to respond to the allegations in the petition in accordance with the provisions of the Juvenile and Domestic Relations District Court Law.

Signature and date fields for the official.

**DETENTION ORDER**  
**COMMONWEALTH OF VIRGINIA**

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT

In re:

.....  
JUVENILE DATE OF BIRTH AGE  
.....  
RACE SEX WEIGHT HEIGHT

It appearing from the petition filed concerning the juvenile that the juvenile may come within the purview of the Juvenile and Domestic Relations District Court Law, and that the welfare of the juvenile requires that his custody be immediately assumed by the Court, in that

- the child has no parent, guardian, custodian or other suitable person able and willing to provide supervision and care for such child; or
- the release of the child would constitute an unreasonable danger to the person or property of others where the child is alleged to be delinquent; or
- the release of such child would present a clear and substantial threat of serious harm to such child's life or health.

It is hereby ORDERED that the juvenile be taken into immediate custody and

- placed in the custody of: ..... , there to be detained  
NAME OF AGENCY OR FACILITY
- until brought before the Court on
  - the next day on which the court sits as provided by law
  - \_\_\_\_\_ at \_\_\_\_\_ AM/PM.
- be released pursuant to a warrant on bail or recognizance.

..... DATE \_\_\_\_\_  
C CLERK C JUDGE C INTAKE OFFICER

**Emergency Removal Order**  
**Commonwealth of Virginia**

Juvenile and Domestic Relations District Court

Commonwealth

In re:

TO: ANY AUTHORIZED OFFICER:

It appearing that the above-named child is a juvenile within the purview of the Juvenile and Domestic Relations District Court Law, as alleged in a petition supported by:

- an affidavit,
- the appropriate sworn testimony,

and it further appearing to the Court that such child is an abused or neglected child and that:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irreparable 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. There are no alternatives less drastic than removal of the child from his home, as defined in the Code of Virginia, 1950, as amended, which would reasonably protect the child's life or health pending a final hearing on the petition.

IT IS THEREFORE ORDERED, that the child be taken into immediate custody and placed in shelter care, namely:

IT IS FURTHER ORDERED that a preliminary removal hearing on the aforesaid petition be held at this Court on

..... DATE AND TIME .....  
..... DATE ..... JUDGE .....

File No. ....

Virginia:  
In the Juvenile and Domestic Re-  
lations District Court of

.....  
**COMMONWEALTH OF VIRGINIA**

*In re*

.....  
.....  
.....  
**a Juvenile**

.....  
**Executed by delivering to and leaving  
with the within-named**

.....  
.....  
.....  
**a true copy thereof.**

**Date** .....

**By** .....

.....  
**Return made to me this** .....

**day of** ..... 19 .....

.....  
*Clark.*

# CIVIL MENTAL TEMPORARY DETENTION ORDER

COMMONWEALTH OF VIRGINIA

Va. Code § 37.1-67.1 FILE NO. ....

- General District Court
- Juvenile and Domestic Relations District Court

NAME OF PATIENT

ADDRESS OF PATIENT

### TO ANY AUTHORIZED OFFICER:

It is alleged or reliably reported that the patient is mentally ill and in need of hospitalization as supported by:

- A sworn petition of ....., a responsible person, OR
- On the motion of the undersigned supported by probable cause,

(To be completed if heard by a magistrate)  
 And, based upon advice by ....., a person skilled in diagnosis or treatment of mental illness.

THE FACTS are as follows:

THEREFORE, you are hereby commanded to take the patient into custody, and

- Bring the patient before a judge or special justice, OR
- If the patient cannot be conveniently brought before a judge or special justice, transport the patient from his present location at:

PRESENT LOCATION OF PATIENT

NAME OF INSTITUTION

ADDRESS OF INSTITUTION

a convenient and willing institution, which is hereby ORDERED to detain said patient for a maximum of 48 hours prior to his/her hearing; provided, however, if said 48-hour period terminates on Saturday, Sunday, or legal holiday, the patient shall be detained a maximum of 72 hours. The institution and examining physician may provide only emergency medical and psychiatric services.

This ORDER shall be returned to the Court OR special justice prior to the hearing.

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APPENDIX D

Selected Constitutional Amendments

Amendments to the Constitution

Amendment I

(Right to Freedom of Expression - Religion, Speech, Press, Assembly and Petition) - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV

(Right Against Unreasonable Search and Seizure) - The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

(Substantive Rights of the Accused - Indictment, Self Incrimination, Double Jeopardy) - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or in public danger nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.

Amendment VI

(Procedural Rights of the Accused - Notice, Speedy and Public Trial, Counsel, Witness and Impartial Jury) - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VIII

(Rights Against Excessive Bail, Fines, and Punishments) - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIII

Section 1: (Prohibition of Slavery) - Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Amendment XIV

Section 1: (States Shall Not Deny Due Process and Equal Protection) - No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**END**