CHAPTER 1

AN INTRODUCTION TO THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT

1.1 HISTORICAL BACKGROUND

The first separate and distinct juvenile court in the country was established in Cook County (Chicago) in 1899. The Illinois Juvenile Court Act created a separate court for minors who committed criminal offenses and directed the establishment of separate institutions for youths in order to segregate them from adult criminals.[1]

The juvenile justice system in Virginia began in 1910 with the creation of authority for judges to sentence juveniles to indeterminate sentences in separate, privately run facilities, even though they were still tried in the regular criminal justice system. In 1914, Virginia established juvenile justice jurisdiction for courts by legislation that largely paralleled the Illinois statute. The first juvenile courts existed only in the large cities, with Richmond having the first such court in 1916.[2]

In 1941, the Supreme Court of Virginia affirmed the trial, conviction, and imposition of the death penalty in circuit court on a 15-year-old black youth who was accused of raping a white woman.[3] The Supreme Court held that the juvenile and domestic relations district court had no power to acquit or convict a minor over the age of 12 charged with an aggravated felonious offense. In 1948, partially in response to that case, a bill was introduced in the General Assembly to establish a statewide system of juvenile courts as courts of record, but the legislature instead called for a study. The resulting Virginia Advisory Legislative Council study culminated in a report and recommendations to the General Assembly,[4] and in 1950 a comprehensive Virginia juvenile code was enacted based on the Standard Juvenile Court Act recommended by the National Council on Crime and Delinquency.[5] Many of the provisions in the present law derive much of their language from the 1950 legislation.

A series of United States Supreme Court decisions in 1966 and 1967 led to a radical transformation of juvenile court practices in Virginia and elsewhere. In 1966,

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[1] Victoria Getis, *The Juvenile Court & The Progressives* (2000); Gwen Hoerr McNamee, ed., *A Noble Social Experiment? The First 100 Years of the Cook County Juvenile Court, 1899-1999* (Chicago Bar Ass'n 1999); Robert E. Shepherd, Jr., *Juvenile Justice: The Juvenile Court at 100*, Crim. Just. 47 (Winter 1999).

[2] An interesting early account of the beginning of the juvenile system in Virginia, and the philosophy behind it, may be found in J. Hoge Ricks, *Summary and Analysis of the Juvenile Laws in Virginia* (1915). J. Hoge Ricks was the first Chief Probation Officer of the Richmond Juvenile Court, and he served as the juvenile court judge for Richmond from 1916 until 1957. *See also* Robert E. Shepherd, Jr., *Pursuing a Dream: The Juvenile Court Movement in Virginia*, Va. Law. 8 (Feb. 1999).

[3] *Mickens v. Commonwealth*, 178 Va. 273, 16 S.E.2d 641 (1941).

[4] Virginia Advisory Legislative Council, Report to the Governor and General Assembly of 1948, *Juvenile and Domestic Relations Courts and Senate Bill 175*, S. Doc. No. 9 (1949).

[5] Judge J. Hoge Ricks of Richmond served on the drafting committee for the Act.

the Court decided its first case involving juvenile justice, *Kent v. United States*.[6] Although that case dealt with the transfer of a youth in Washington, D.C., from the juvenile court to an adult court for trial and was decided on the basis of District of Columbia law, the dictum in the case signaled a shift in attitude toward the juvenile court.

The Court in *Kent* ruled that in making a decision as momentous as withdrawing the benefits of the juvenile system from a youth, the state must provide the juvenile with counsel, a hearing on the question of waiver or transfer, access to any records or reports considered by the court in making the decision, and a statement of the reasons for waiving the juvenile court's jurisdiction. Despite the Court's conclusion that these rights were afforded by statute in the District, Justice Abe Fortas went a step further by opining that "the hearing must measure up to the essentials of due process and fair treatment."[7] Justice Fortas went so far as to say that in the juvenile court of the time, "[t]here is evidence . . . that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[8]

Any lingering doubts about the constitutional dimensions of juvenile court proceedings were quickly settled in the following year by the landmark decision in *In re Gault*.[9] In that case, the Court concluded that the 15-year-old defendant was denied his constitutional rights in his juvenile court trial in Arizona. Justice Fortas, again writing for the Court, concluded that "it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.' Under our Constitution, the condition of being a boy does not justify a kangaroo court."[10]

The Court specifically ruled that, in the factfinding stage of the process, juveniles charged with delinquency who are subject to incarceration are entitled to: (i) the assistance of a lawyer, including appointed counsel if indigent; (ii) written notice of the specific charges against them; (iii) the protection of the Fifth Amendment's privilege against self-incrimination; and (iv) confrontation of the witnesses against them, including subjecting those witnesses to cross-examination. In the same year, the *Report of the President's Commission on Law Enforcement and the Administration of Justice*[11] also raised serious questions about the fairness and effectiveness of the juvenile justice system nationally.

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[6] 383 U.S. 541 (1966).

[7] *Id.* at 562.

[8] *Id.* at 556. The Virginia Supreme Court subsequently concluded that *Kent* was not a decision of constitutional dimensions but was decided on statutory grounds and therefore not binding on Virginia courts. *Cradle v. Peyton*, 208 Va. 243, 156 S.E.2d 874 (1967), *cert. denied*, 392 U.S. 945 (1968). This decision has been rendered moot by subsequent statutory revision that guaranteed to juveniles in Virginia the rights recognized in *Kent*.

[9] 387 U.S. 1 (1967).

[10] *Id.* at 27-28.

[11] (1967).

Subsequent decisions by the Court have exposed some ambivalence concerning the due process model for juvenile justice, with the decisions in *In re Winship*[12] and *Breed v. Jones*[13] reaffirming the *Kent-Gault* expansionism, while the decisions in *McKeiver v. Pennsylvania*[14] and *Schall v. Martin*[15] asserted a more *parens patriae* view of the juvenile court process. As the consequences of a juvenile proceeding become more serious, however, it would seem that the gulf between due process protections for adults and juveniles will have to be closed.

The Virginia General Assembly's reorganization of the court system in 1972 and 1973 created a statewide system of juvenile and domestic relations district courts. Before this reorganization, the juvenile courts were a part of the county courts in all jurisdictions other than those cities where separate courts had previously been established and those areas of the commonwealth where regional juvenile and domestic relations courts were operating.

In 1974, the General Assembly directed the Virginia Advisory Legislative Council (VALC) to study the revision of the juvenile code in the commonwealth, and a subcommittee of legislators, judges, juvenile justice participants and experts, and citizens was established to carry out the study. The subcommittee issued its report and recommendations in 1976.[16] The Council's recommendations emphasized diversion, rehabilitative treatment, reparation, and restitution.

> The Council feels it is important to give the court every viable alternative in dealing with the sensitive and often complex matters related to children and families who come within its jurisdiction. Such alternatives begin with an emphasis on diversion from the system itself. A trained intake unit should, to the extent possible and consistent with the public safety, divert from the justice system those children and family matters which can be cared for or treated through alternative processes. Such diversion of cases where court intervention would be inappropriate or ineffective will conserve the court's time and allow the court to utilize its expertise in more serious matters peculiar to its jurisdiction. When it is suitable for a case to come before the court, the judge should be empowered to require rehabilitative treatment, reparation, restitution or any other conditions of behavior necessary to protect the community from dangerous citizens and to improve the life and development of parties before the court. The Council's proposals for dispositional alternatives available to the court envision a broader role for the court in ensuring

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[12] 397 U.S. 358 (1970). Juveniles charged with delinquency must be proven guilty beyond a reasonable doubt, even though the process may be labeled as civil.

[13] 421 U.S. 519 (1975). The protection of the double jeopardy clause attaches to juvenile proceedings so as to prevent transfer for trial as an adult subsequent to a conviction for delinquency.

[14] 403 U.S. 528 (1971). The constitutional right to a trial by jury does not apply to juvenile delinquency proceedings. The Court went on to say that states could provide that right to youth in their jurisdiction. Virginia does so through the right to a jury in a de novo appeal to the circuit court. Va. Code § 16.1-296(C).

[15] 467 U.S. 253 (1984). Preventive detention of juvenile before trial does not violate the Constitution.

[16] Virginia Advisory Legislative Council, Report to the Governor and the General Assembly of Virginia, *Services to Youthful Offenders, Revision of the Juvenile Code*, S. Doc. No. 19 (1976).

> that services needed are delivered, that the rights of children and families whether or not they are accused of violations of the law are protected and that proper safeguards are followed for the benefit of the community.[17]

The Council also recommended that juvenile and domestic relations district court judges be advocates for the best interests of the children that come before it.

> The recommendations made in this report are intended to give juvenile and domestic relations district courts more responsibility for advocating the best interests of children and for monitoring those programs in which it places children. The Council believes greater emphasis must be placed on community involvement with troubled children through rehabilitative treatment programs and community residential care. The local juvenile court is in a unique position to point out the need for support of policies which promote the best interests of children and which will ultimately benefit the community as a whole. In the final analysis the involvement and support of the community may be the most critical factor.[18]

The following year the General Assembly took into account these recommendations and the advancements in due process over the previous decade and comprehensively revised the juvenile justice system.[19] This revision, with various subsequent amendments, constitutes the present juvenile code governing juvenile proceedings in the commonwealth.

Following a comprehensive drafting process over several years, the Virginia Supreme Court in 1992 adopted the Juvenile and Domestic Relations District Court Rules as part eight of the Rules of the Virginia Supreme Court. In 1993, the General Assembly passed family court legislation after a three-year pilot study. The legislation was to take effect if further action on funding took place in the 1994 General Assembly session, but the 1994 General Assembly put off the effective date of the family court until July 1, 1996, and no funding mechanism was put in place. The 1998 Session of the General Assembly failed to provide funding for the family court, thus leading to the demise of the authorizing legislation and the end of the family court in Virginia for the foreseeable future.

In 1995, in response to both rising youth crime rates and public rhetoric about juvenile offenders, Virginia's elected officials called for a general toughening of Virginia's juvenile justice system. As a result, three studies focused on the philosophy and procedures for dealing with children and youth. First, Governor George Allen appointed a Governor's Commission on Juvenile Justice Reform, whose final report

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[17] *Id.*

[18] *Id.*

[19] *See* Lelia Baum Hopper & Frank M. Slayton, *The Revision of Virginia's Juvenile Court Law*, 13 U. Rich. L. Rev. 847 (1979). The VALC Report and this article, co-authored by the chief patron of House Bill 518 and the staff attorney from the Virginia Division of Legislative Services who staffed the VALC study, are quite useful in ascertaining the legislative intent behind the 1977 juvenile code revision.

favored opening up juvenile trials and records to the public and easing procedures for transfer of juveniles to adult courts.[20] A second group, the Virginia Commission on Youth, established a Juvenile Justice System Task Force.[21] This study and its recommendations focused more on prevention and early intervention, with a somewhat lesser emphasis on court procedures and open trials. The third study, conducted by the Joint Legislative Audit and Review Commission (JLARC), issued a report that was intended to provide an accurate picture of the operation of the juvenile justice system in the commonwealth.[22]

The Governor's Commission and the Commission on Youth studies reached different conclusions and made generally conflicting recommendations, with the JLARC study largely supporting the conclusions of the Commission on Youth. As a result, two sets of bills were introduced in each house of the General Assembly in 1996. Shortly before consideration of the Senate versions by its Courts of Justice Committee, a compromise resulted in two bills, enacted effective July 1, 1996, that sought to reform the juvenile justice system by emphasizing accountability for youth offenders and making it easier to try youths as adults.[23] Most significantly, the new legislation reduced judicial discretion over the transfer decision by mandating transfer in the most serious crimes and increasing prosecutorial authority to try youths as adults in a wide range of other felonies without judicial review.

At the same time, the General Assembly enacted the Serious Juvenile Offender statute, which provides juvenile and domestic relations district court judges with the ability to sentence juvenile offenders to determinate sentences up to age 21.[24]

1.2 ORGANIZATION OF THE JUVENILE CODE

The juvenile and domestic relations district court law, chapter 11 of title 16.1 of the Virginia Code,[25] is fairly comprehensive, reflecting the fact that juvenile court law is largely statutory, with little reliance on case law. The code has three significant organizational characteristics: (i) it sets forth different procedural tracks that depend on whether the jurisdictional premise is delinquency, abuse or neglect, children in need of services, or children in need of supervision;[26] (ii) it progresses chronologically

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[20] *Governor's Commission on Juvenile Justice Reform, Final Report* (Dec. 20, 1995).

[21] *Report of the Virginia Commission on Youth on the Study of Juvenile Justice System Reform*, H. Doc. No. 37, Va. Gen. Assembly (1996).

[22] *Report of the Joint Legislative Audit and Review Commission, Juvenile Delinquents and Status Offenders: Court Processing and Outcomes*, S. Doc. No. 14, Va. Gen. Assembly (1996).

[23] Act of Apr. 6, 1996, ch. 755, 1996 Va. Acts 1315; Act of Apr. 17, 1996, ch. 914, 1996 Va. Acts 2209. Chapter 914 was the controlling version of the legislation as it was the last passed and signed.

[24] Va. Code § 16.1-285.

[25] Va. Code § 16.1-226 *et seq.*

[26] For example, section 16.1-278.2 of the Virginia Code delineates the dispositional alternatives for children found to be abused or neglected, section 16.1-278.4 describes dispositions for children in need of services, and section 16.1-278.8 addresses delinquency dispositions.

through the process in an orderly sequence;[27] and (iii) wherever there are alternative courses of action, the least intrusive or restrictive alternative is listed first.[28] The third characteristic is particularly significant in light of the philosophical basis for the juvenile and domestic relations district court and its jurisdiction.

1.3 PHILOSOPHY OF THE JUVENILE JUSTICE SYSTEM

From the very first juvenile court in Chicago in 1899, the emphasis has been on treatment and rehabilitation rather than on punishment. The jurisdiction of the original juvenile court gradually expanded to include a broader concern with children who had problems with their parents or schools or who were orphaned or abused or neglected, but the emphasis remained on attempting to obtain a result that was in the best interests of the child.

The Virginia General Assembly has similarly been concerned with the philosophy and purpose of the juvenile code. Section 16.1-227 of the Virginia Code expresses the legislature's intent in enacting the law. This legislative intent is important because it assists those charged with the administration of juvenile justice in determining the policy behind the specifics in the juvenile code.[29]

> This law shall be construed liberally and as remedial in character, and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all proceedings the welfare of the child and the family, the safety of the community and the protection of the rights of victims are the paramount concerns of the Commonwealth and to the end that these purposes may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.
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> This law shall be interpreted and construed so as to effectuate the following purposes:
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> 1. To divert from or within the juvenile justice system, to the extent possible, consistent with the protection of the public safety, those children who can be cared for or treated through alternative programs;
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> 2. To provide judicial procedures through which the provisions of this law are executed and enforced and in which the parties are

[27] For example, section 16.1-246 governs taking children into custody, section 16.1-248.1 describes criteria for detention or shelter care, section 16.1-260 addresses intake, and section 16.1-266 provides for appointment of counsel.

[28] Section 16.1-247(E), for example, describes the options after a juvenile has been taken into custody under certain circumstances and provides first for release to parents, second for release on bail or recognizance, and only after consideration of those options, placement in shelter care or detention.

[29] *Tross v. Commonwealth*, 21 Va. App. 362, 370-71, 464 S.E.2d 523, 527 (1995); *Hairfield v. Commonwealth*, 7 Va. App. 649, 655, 376 S.E.2d 796, 799 (1989). The Code section was amended along with the general revision that took place in 1996.

assured a fair hearing and their constitutional and other rights are recognized and enforced;

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

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

1.4 JURISDICTION

1.401 Age Jurisdiction. The juvenile and domestic relations district court has jurisdiction primarily over matters involving juveniles, defined as persons under the age of 18.[30] Jurisdiction is determined by the "age of the child at the time of the acts complained of in the petition."[31] For example, if a person who commits an act designated as a crime under Virginia law is 17 years and 11 months old when the act is committed and is 18 years and 3 months old when a warrant is sought, the case falls within the jurisdiction of the juvenile and domestic relations district court, and the present adult would have to be handled initially as a juvenile delinquent through a petition filed in the juvenile and domestic relations district court.

There is no statutory minimum age for delinquency, or any other jurisdictional age limit, and it is debatable whether the common law minimum age of seven for criminal responsibility applies in the juvenile and domestic relations district court.[32] The juvenile code does prescribe a minimum age of 11 for commitment to the state, but it is silent on the jurisdictional age issue.[33] However, if a person has reached the

[30] Va. Code § 16.1-228. If a person under the age of 18 has previously been convicted as an adult, that person is no longer a juvenile for subsequent criminal acts. Where a defendant stated his age as 19 during arraignment in the general district court and never thereafter presented credible evidence that he was under the age of 18 at the time of the offense, he was properly tried in the circuit court as an adult. *Winston v. Commonwealth*, 26 Va. App. 746, 497 S.E.2d 141 (1998). A federal court had previously held in a habeas corpus case that a state prisoner had waived his right to challenge the jurisdiction of the Virginia circuit court where he had misrepresented his age as 18. *Penn v. Peyton*, 270 F. Supp. 981 (W.D. Va. 1967).

[31] Va. Code § 16.1-241.

[32] *In re Devon T.*, 584 A.2d 1287 (Md. Ct. Spec. App. 1991) (common law rules still apply). No Virginia decision has specifically rejected the continued applicability of the infancy defense described in *Law v. Commonwealth*, 75 Va. 885 (1881), to juveniles between the ages of 7 and 14 involved in juvenile delinquency cases. *Cf. Lee v. Nationwide Mut. Ins. Co.*, 255 Va. 279, 283, 497 S.E.2d 328, 330 (1998) (a civil case that nonetheless alludes to the defense). *See* Robert E. Shepherd, Jr., *Juvenile Justice: Rebirth of the Infancy Defense*, Crim. Just. 45 (Summer 1997). *See also* ¶ 8.10 of Chapter 8 of this book.

[33] Va. Code § 16.1-278.7.

age of 21 without being tried as a juvenile, he or she should be tried as an adult, even if the offense occurred before that person's 18th birthday.[34]

1.402 Territorial Jurisdiction (Venue). When delinquency is alleged, the case must begin in the city or county where the alleged acts occurred unless the child and the commonwealth's attorneys for each jurisdiction consent in writing to the case being brought in the city or county where the juvenile resides.[35] In all other cases involving children, the proceedings generally should begin in the city or county where the child resides or where the child is present.[36]

Section 16.1-243 of the Virginia Code also provides for venue in custody and visitation matters to be established according to rules comparable to those used for jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. Spousal and child support cases other than those covered by title 20 of the Virginia Code are to be brought in the city or county where either party resides or in the locality where the respondent resides when the proceeding is begun.[37] Family abuse cases are to be commenced where (i) either party has his or her principal residence; (ii) the abuse occurred; or (iii) a protective order was issued if at the time the proceeding was commenced the order is in effect to protect the petitioner or a family or household member of the petitioner.[38] Except for custody, visitation, and support cases, the court may at any time, for good cause shown, transfer a matter to the city or county of the child's residence from another venue, although in a delinquency case that transfer cannot be made until after adjudication.[39]

1.403 Subject Matter Jurisdiction.

A. In General. The juvenile and domestic relations district court in Virginia has jurisdiction over practically all matters affecting the family other than divorce and adoption. Section 16.1-241 of the Virginia Code governs the jurisdiction of the court.

B. Delinquency and Transfer. The court has original and exclusive jurisdiction over all charges against a juvenile that would be a crime if committed by an adult, whether a misdemeanor, felony, traffic violation, or refusal to take a blood test, and regardless of whether the offense would be a violation of state or federal law or a city, county, town, or service district ordinance.[40] A single act appears to be

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[34] Va. Code § 16.1-242. However, it should not be permissible to intentionally delay a prosecution until after the 21st birthday. *See United States v. Juvenile Male*, 819 F.2d 468 (4th Cir. 1987).

[35] Va. Code § 16.1-243(A)(1)(a).

[36] Va. Code § 16.1-243(A)(1)(d); *Falco v. Grills*, 209 Va. 115, 161 S.E.2d 713 (1968).

[37] Va. Code § 16.1-243(A)(2).

[38] Va. Code § 16.1-243(A)(3).

[39] Va. Code § 16.1-243(B). A motion to transfer venue is governed by Rule 8:10 of the Rules of the Virginia Supreme Court. *See* Appendix 1-1 (DC-616 Order of Transfer).

[40] Va. Code §§ 16.1-241(A), -228.

sufficient.[41] Delinquency does not include a "traffic infraction" as defined in section 46.2-100 of the Virginia Code.

For children facing charges as adults, the court has varying degrees of jurisdiction.[42] If the Commonwealth charges a juvenile with aggravated malicious wounding or with homicide, and the juvenile is 14 years of age or older, the court's jurisdiction is limited to holding a preliminary hearing to determine whether there is probable cause to certify the case to a grand jury.[43] If the Commonwealth charges the juvenile with one of a range of other serious felonies and moves to certify the case to circuit court, the court's jurisdiction is similarly limited.[44] For all other felonies, if a juvenile 14 years of age or older is charged with an offense that would be a felony if committed by an adult, the juvenile and domestic relations district court, on motion of the commonwealth's attorney, must hold a hearing to consider retaining jurisdiction or transferring the juvenile to the appropriate circuit court for criminal proceedings.[45] Transfer to the circuit court is subject to conditions set forth in section 16.1-269.1(A).

Section 16.1-241 provides that the juvenile and domestic relations district court's jurisdiction over an "ancillary charge," a delinquent act committed by the juvenile as part of the same act or transaction as a violent juvenile felony, is also divested when the principal charge is transferred or certified.[46]

Once a juvenile is convicted as an adult in the circuit court, the juvenile and domestic relations district court no longer has jurisdiction to handle the offender as a juvenile for criminal acts that would otherwise constitute delinquency.[47] A youth who is acquitted in circuit court retains juvenile status.[48]

C. Children in Need of Services (CHINServ). The court has jurisdiction over any "child in need of services,"[49] defined as

> (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14 whose behavior, conduct or condition presents

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[41] *But see Jones v. Commonwealth*, 185 Va. 335, 38 S.E.2d 444 (1946).

[42] *See* Va. Code § 16.1-269.1.

[43] Va. Code § 16.1-269.1(B).

[44] Va. Code § 16.1-269.1(C).

[45] Va. Code § 16.1-269.1(A).

[46] Va. Code §§ 16.1-241(A), -269.1(D).

[47] Va. Code § 16.1-269.6(C).

[48] Before 2007, the juvenile and domestic relations district court lost jurisdiction over any youth who had been tried and treated as an adult, even if the youth was acquitted. In 2007, the General Assembly modified the "once an adult, always an adult" rule. The penalty no longer applies to youth previously tried but not convicted in circuit court. Now a young person must be "tried and convicted in a circuit court as an adult" to be "considered and treated as an adult in any criminal proceeding resulting from any alleged future criminal acts." *See* Va. Code § 16.1-271; *see also* Chapter 7 of this book.

[49] Va. Code § 16.1-241(A)(1).

or results in a serious threat to the well-being and physical safety of another person.[50]

The conduct must also present a clear and substantial danger to the child's life or health or to the life and health of another person, *and* there must be a need for treatment or services not being received, *and* the intervention of the court must be essential to provide the treatment or services.[51]

D. Children in Need of Supervision (CHINSup). The court has jurisdiction over truants and runaways, referred to as children in need of supervision.[52] A "child in need of supervision" is one who is habitually truant without justification if (i) the child has been offered an adequate opportunity to receive the benefit of any and all required educational services that meet the child's particular needs; *and* (ii) the school system has made a reasonable effort to effect the child's regular attendance without success; *and* (iii) the school system has documented compliance with the provisions of section 22.1-258.[53]

A child in need of supervision is also one who is absent on more than one occasion from either home or a residential care facility without reasonable cause and without consent or authority if (i) the conduct presents a clear and substantial danger to the child's life or health; *and* (ii) the child or family is in need of treatment, rehabilitation, or services not presently being received; *and* (iii) the court's intervention is essential to provide the services.[54] The court's jurisdiction over such noncriminal misbehavior eliminates the previous category of the "habitually disobedient" or incorrigible child.

E. Status Offenders. Status offense jurisdiction covers a child who commits an act prohibited by law that would not be a crime if committed by an adult, such as tobacco possession or curfew violations.[55] Section 18.2-370.01 of the Virginia Code makes it a Class 1 misdemeanor for a juvenile over age 13 but under age 18 to take indecent liberties with a child under age 14 who is at least five years younger than the accused. Because the section applies only to persons under age 18, this appears to be a status offense rather than a delinquent act.[56]

F. Abused and Neglected Children. The court has jurisdiction over matters involving an "abused or neglected" child, defined as a child (i) whose parent or other custodian creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon the child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child present with a custodian

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[50] Va. Code § 16.1-228.

[51] *See* Chapters 10 and 18 of this book.

[52] Va. Code § 16.1-241(A)(1).

[53] Va. Code § 16.1-228. *See* Chapters 10 and 17 of this book.

[54] Va. Code § 16.1-228; *see also* Va. Code § 16.1-241(A)(4).

[55] Va. Code § 16.1-228; *see also* Va. Code § 16.1-241(A)(4).

[56] *See* Chapter 10 of this book.

during the manufacture or attempted manufacture of a Schedule I or II controlled substance or during the unlawful sale of that substance; (ii) whose parent or other custodian neglects or refuses to provide care necessary for the child's health;[57] (iii) whose parent or other custodian abandons the child;[58] (iv) whose parent or custodian commits or allows to be committed any sexual act upon the child in violation of the law; (v) who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the parent or custodian; or (vi) whose parent or custodian creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling with a person to whom the child is not related by blood or marriage and who the parent or custodian knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender.[59] The court further has jurisdiction over a child at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of that parent or custodian.[60]

G. Adult Offenses Against a Child. The court has original and exclusive jurisdiction over "persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the purview" of the law, such as contributing to the delinquency of a minor, and persons charged with "any other offense against the person of a child."[61] Offenses against the person of a child do not include offenses against the property of a juvenile.[62] When the charge is a felony, the juvenile and domestic relations district court's jurisdiction is limited to holding a preliminary hearing to determine the existence of probable cause.[63]

H. Intrafamily Offenses. The court also has original and exclusive jurisdiction over "all offenses in which one family or household member is charged with an offense in which another family or household member is the victim."[64] The court's jurisdiction in felonies is limited to the determination of probable cause. The statute defines family or household member to include a spouse, former spouse, parent, stepparent, child, stepchild, brother, sister, half-brother, half-sister,

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[57] However, section 16.1-228 provides 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 will, for that reason alone, be considered an abused or neglected child.

[58] Section 16.1-228 also provides that leaving a newborn child with a hospital or an attended rescue squad is a defense to a civil proceeding for abandonment. Parental rights may still be terminated on abandonment grounds.

[59] Va. Code § 16.1-228. Section 63.2-100 of the Virginia Code includes "sexual exploitation" in the definition of those acts of "abuse and neglect" that must or may be reported to the department of social services.

[60] Va. Code § 16.1-241(A)(2a). *See* Chapters 12 and 13 of this book.

[61] Va. Code § 16.1-241(I). A woman who took a 16-year-old girl to her home to spend the night with the woman's son without the girl's parents' permission was properly convicted of contributing to the girl being in need of supervision. *Watkins v. Commonwealth*, No. 975-96-3, 1997 Va. App. LEXIS 294 (Va. Ct. App. May 6, 1997) (unpublished).

[62] 1974-75 Report of the Attorney General 49; 1974-75 Report of the Attorney General 224.

[63] Va. Code § 16.1-241(I). *Compare Jones v. Commonwealth*, 220 Va. 666, 261 S.E.2d 538 (1980) *with Payne v. Warden of Powhatan Corr. Ctr.*, 223 Va. 180, 285 S.E.2d 886 (1982).

[64] This also includes offenses relating to the custody or visitation of a child. Va. Code §§ 16.1-241(J), 18.2-49.1(B).

grandparent, grandchild, in-law, person with whom the victim has a child in common, and persons who cohabit or have cohabited together within the previous 12 months.[65]

I. Parents. The court has jurisdiction not only over children who have been abused or neglected and who are the subject of an entrustment agreement but also over the parents or guardians of those children. In CHINServ, CHINSup, or delinquency matters, the court also has jurisdiction over the parents or guardians if they have encouraged or contributed to the acts complained of by overt act or omission.[66] The court also has jurisdiction over petitions filed by school boards against parents pursuant to sections 16.1-241.2 and 22.1-279.3 of the Virginia Code for their "willful and unreasonable refusal to participate in efforts to improve the student's behavior" or ensure the child's school attendance.[67]

J. Desertion and Nonsupport. The court has jurisdiction over cases involving persons "charged with deserting, abandoning or failing to provide support for any person in violation of law."[68]

K. Traffic Infractions and Driver's Licenses. Section 16.1-241(A)(6) incorporates by reference the definition of a traffic infraction in section 46.2-100. These infractions are punishable in the juvenile and domestic relations district court only by penalties that may be imposed on an adult.[69] The judge also has responsibility for the physical delivery of driver's licenses issued to minors and the conduct of a "formal, appropriate ceremony."[70]

L. Custody, Visitation, and Support. The juvenile and domestic relations district court's jurisdiction over matters involving the custody, visitation, and support of children is concurrent with that of the circuit court in habeas corpus proceedings or when the determination of such an issue is incidental to another proceeding in the circuit court.[71] A petition governing these matters may be "filed at

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[65] Va. Code §§ 16.1-228, -241(J). In *Bell v. Commonwealth*, No. 0799-95-1, 1996 Va. App. LEXIS 424 (Va. Ct. App. June 11, 1996) (unpublished), the court ruled that the illegitimate son of a crime victim's deceased husband was not a stepchild and thus was properly tried in the general district court. The Attorney General of Virginia has also expressed the opinion that the general district court, not the juvenile and domestic relations district court, has jurisdiction over unrelated persons of the same sex who commit offenses against each other, even if they occupy the same residence. 1994 Report of the Attorney General 60.

[66] Va. Code § 16.1-241(F); *see also Grigg v. Commonwealth*, 224 Va. 356, 297 S.E.2d 799 (1982). A mother could be found in contempt of a juvenile and domestic relations district court order issued in connection with her daughter being found in need of supervision where the mother refused to get alcohol abuse treatment and interfered with the daughter's treatment. *Hanson v. Commonwealth*, No. 2899-95-3, 1997 Va. App. LEXIS 206 (Va. Ct. App. Apr. 1, 1997) (unpublished). In *Peace v. Commonwealth*, No. 2651-99-2, 2000 Va. App. LEXIS 725 (Va. Ct. App. Nov. 14, 2000) (unpublished), the Court of Appeals ruled that although a mother was aware that her son and his friends were smoking marijuana at her home, her failure to act more forcefully to stop it did not constitute a willful omission to act.

[67] Va. Code §§ 16.1-241(S), -241.2.

[68] Va. Code § 16.1-241(E). *See Virginia Family Law—A Systematic Approach* (Virginia CLE 3d ed. 2008 & Supp. 2009).

[69] Va. Code § 16.1-278.10.

[70] Va. Code § 46.2-336.

[71] Va. Code §§ 16.1-241(A)(3), -244. *See Virginia Family Law—A Systematic Approach* (Virginia CLE 3d ed. 2008 & Supp. 2009).

any time by any party with a legitimate interest therein,"[72] and a visitation decree may provide for privileges for grandparents, present or former stepparents, or other family members.[73]

The juvenile and domestic relations district court's jurisdiction over custody, visitation, and support is terminated when a suit for divorce is filed in a circuit court raising custody, guardianship, visitation, or child or spousal support issues in the pleadings and a hearing, including a pendente lite hearing, is set within 21 days of the filing.[74] Although the juvenile and domestic relations district court is divested of the right to enter any further decrees or orders, it retains the power to enforce its orders before the entry of a circuit court order. The circuit court may provide in its final decree that future matters involving custody, care, and support will be transferred to the juvenile and domestic relations district court.[75]

M. Entrustment Agreements. The court has exclusive and original jurisdiction to approve entrustment agreements entered into pursuant to section 63.2-903 or 63.2-1817 of the Virginia Code and to consider other cases where a parent or parents seek to be relieved of the care and custody of a child.[76]

N. Termination of Parental Rights. The court has jurisdiction over the termination of "residual parental rights and responsibilities," defined in section 16.1-228 as those rights and responsibilities remaining with the parent after custody and guardianship of the person have been transferred to some other person or agency (including, for example, the right to visitation, to consent to adoption, to determine religious affiliation, and the responsibility for support).[77] This jurisdiction is said to be concurrent with circuit courts, but that concurrence seems to be limited to adoption proceedings and not to include an independent proceeding for termination of residual parental rights pursuant to section 16.1-283 of the Virginia Code. Termination of residual parental rights, for example, cannot take place during a divorce proceeding in circuit court.[78]

O. Mental Commitments and Mental Retardation Certification. The court has exclusive and original jurisdiction over proceedings for the commitment of mentally ill children and judicial certification of eligibility for admission to a treatment facility of a mentally retarded child pursuant to article 16 of chapter 11 of title 16.1[79] and chapters 1[80] and 8[81] of title 37.2 of the Virginia Code, and

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[72] Va. Code § 16.1-241(A).

[73] *See Troxel v. Granville*, 530 U.S. 57 (2000); *Williams v. Williams*, 256 Va. 19, 501 S.E.2d 417 (1998); *Thrift v. Baldwin*, 23 Va. App. 18, 473 S.E.2d 715 (1996).

[74] Va. Code § 16.1-244; *Poole v. Poole*, 210 Va. 442, 171 S.E.2d 685 (1970).

[75] Va. Code § 20-79(c).

[76] Va. Code § 16.1-241(A)(4).

[77] Va. Code § 16.1-241(A)(5).

[78] *Church v. Church*, 24 Va. App. 502, 483 S.E.2d 498 (1997). *See* Chapter 14 of this book.

[79] Va. Code § 16.1-335 *et seq.*

[80] Va. Code § 37.2-100.

concurrent jurisdiction with the general district court over those proceedings involving adults.[82]

P. Consent to Medical or Surgical Treatment. The court has the power to consent to emergency medical or surgical treatment for a child who is unmarried or has never been married when the consent of a parent or other legal custodian is unobtainable because the parent or custodian (i) is not a resident of Virginia; (ii) cannot be located; (iii) cannot be consulted with promptness that is reasonable under the circumstances; or (iv) fails to give consent or provide the treatment when requested by the judge to do so.[83] Section 54.1-2969 requires that the judge also make a reasonable effort to notify the child's parent or guardian of that action as soon as practicable.[84]

Q. Other Judicial Consents. The court is also empowered to give judicial consent to other activities that may require parental consent when the child is separated from the parents and in the custody of the court, such as marriage, application for driver's license, military enlistment, or job corps enrollment.[85]

R. Petitions for Obtaining Services. The court has a mandamus-type power to order treatment, rehabilitation, or other services from an agency or institution that is otherwise required by state or federal law or local ordinance to provide those services.[86] This jurisdiction is concurrent with that of circuit courts.[87]

S. Work Permits. The court has jurisdiction to permit a child to apply for a work permit where the child is separated from the parents or custodians.[88]

T. Reversal of Termination of Parental Rights. The court may entertain a petition filed by a natural parent seeking reversal of an order terminating residual parental rights where that termination resulted from a voluntary relinquishment and the child has not yet been placed in the home of adoptive parents.[89]

U. Spousal Support. The court has concurrent jurisdiction to award spousal support to a person who has been separated from his or her spouse, although

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[81] Va. Code § 37.2-800 *et seq.*

[82] Va. Code § 16.1-241(B). *See* Chapter 15 of this book.

[83] Va. Code § 16.1-241(D); *see also* Va. Code § 54.1-2969. *See* Chapter 18 of this book.

[84] *See* Va. R. 8:3, 8:22.

[85] Va. Code § 16.1-241(C); *see also* Va. Code §§ 20-48 (marriage), 46.2-334 (driver's license); Va. R. 8:22.

[86] Va. Code §§ 16.1-241(G), -278. This provision is largely based on section 255 of the New York Family Court Act, and the annotations under that Act are relevant to the scope and exercise of the court's authority under the Virginia provision. See Chapter 18 of this book for a more extensive discussion of this provision.

[87] Va. Code § 16.1-241(G); *see* Va. R. 8:3; *see also* Chapter 18 of this book.

[88] Va. Code § 16.1-241(H).

[89] Va. Code § 16.1-241(K).

that award is not res judicata in any subsequent proceeding for spousal support in a circuit court.[90]

V. Family or Household Member Abuse Protective Orders. The court has exclusive jurisdiction over protective orders in family or household member abuse cases.[91] Section 16.1-253.4 of the Virginia Code provides expansive remedies in family abuse cases.[92]

W. Emancipation. The court is authorized to emancipate a child age 16 or older upon the petition of either the parents or the child if the minor (i) has entered into a valid marriage, (ii) is on active duty in the military, or (iii) willingly lives separate and apart from his or her parents and is capable of self-support and of managing his or her own financial affairs.[93]

X. Parentage Petitions. The juvenile and domestic relations district court has concurrent jurisdiction with the circuit court to determine parentage pursuant to chapter 3.1 of title 20 of the Virginia Code.[94]

Y. Enforcing Requests for Information or Subpoenas in Administrative Appeals Regarding Child Abuse or Neglect. The court has jurisdiction over petitions to enforce a request for information or questions relating to subpoenas arising out of administrative appeals regarding child abuse or neglect pursuant to section 63.2-1526 of the Virginia Code.[95]

Z. Parental Placement Adoption Consent Hearings. Petitions filed in connection with parental placement adoption consent hearings pursuant to section 63.2-1233 of the Virginia Code are heard in juvenile and domestic relations district court, and those matters are to be given priority on the docket.[96]

AA. Hearings on Attempted Bypass of Parental Notification of Abortion. Petitions filed by a juvenile seeking a judge's authorization to have an abortion without notification of a parent, legal guardian, or other authorized person are heard in juvenile and domestic relations district court, and these hearings are to be "given precedence over other pending matters."[97]

BB. Petitions Dealing with Standby Guardianships. The court has jurisdiction over petitions filed pursuant to sections 16.1-349 through 16.1-355 of the

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[90] Va. Code § 16.1-241(L); *see also* Va. R. 8:3.

[91] Va. Code §§ 16.1-241(M), -253.1, -278.14.

[92] Va. Code § 16.1-241(R).

[93] Va. Code §§ 16.1-241(O), 16.1-331 to -334, 8.01-229(A). See Chapter 18 of this book for a more extensive discussion of emancipation.

[94] Va. Code §§ 16.1-241(Q), 20-49.1 *et seq.*

[95] Va. Code § 16.1-241(T).

[96] Va. Code § 16.1-241(U).

[97] Va. Code § 16.1-241(V). *See* Chapter 18 of this book.

Virginia Code relating to standby guardianships for children of debilitated or incompetent parents or guardians.[98]

CC. Petitions for Permission to Enter School Property. The juvenile and domestic relations district courts and the circuit courts have concurrent jurisdiction to hear petitions filed pursuant to section 18.2-370.5 for permission to enter onto school property.[99] With limited exceptions for students and registered voters engaged in the act of voting, section 18.2-370.5 prohibits adults convicted of sexually violent offenses from entering onto school property or child day center property during school hours or for school-related or school-sponsored events unless the person obtains a court order permitting entrance. The court may issue that order for good cause shown and after notice is given to the commonwealth's attorney and the chief administrator of the school or child day center.[100]

1.404 Duration of Jurisdiction. Once jurisdiction over the person has been obtained by a juvenile and domestic relations district court, that jurisdiction may be retained until the person reaches the age of 21, except when custody is in the Department of Juvenile Justice or when jurisdiction has been divested by the circuit court in divorce proceedings pursuant to section 16.1-244.[101] The juvenile and domestic relations district court also loses jurisdiction over "ancillary charges" when a principal charge has been transferred or certified to the circuit court for trial as an adult offense pursuant to section 16.1-269.1.[102] The court, however, retains jurisdiction over children in a foster care case for the purpose of conducting periodic foster care reviews and permanency planning hearings while the case is on appeal to the circuit court or Virginia Court of Appeals.[103]

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[98] Va. Code § 16.1-241(W). *See* Chapter 18 of this book.

[99] Va. Code § 16.1-241(X).

[100] Va. Code § 18.2-370.5.

[101] Va. Code § 16.1-242.

[102] Va. Code § 16.1-241(A).

[103] Va. Code § 16.1-242.1.

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