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Since 1899, the year in which the state of Illinois established a separate statutory framework for addressing the problems of children before the courts, the juvenile justice system has been struggling to establish its identity in the jurisprudence of the United States. The juvenile court laws of this country, including those of the Commonwealth of Virginia, have historically been based on the doctrine of "parens patriae", which is formally defined as the "sovereign power of guardianship over persons under disability."[1] According to this doctrine, the state, through the court system, can be trusted to fulfill its obligation with respect to children with care and solicitude and without any insistence upon a granting of constitutional rights to the children who come into contact with the system. In return for the special benefits accorded the child by the state in the juvenile court, the child gives up certain constitutional protections. The United States Supreme Court recognized during the late 1960's and the early 1970's that the courts and the states had not kept up their end of the bargain made on behalf of children. The constitutional rights of children were redefined and restored in a series of decisions which has formed the basis of modern juvenile court reform.

In the 1966 case of *Kent v. United States*[2] the operation of the juvenile justice system was first seriously questioned when the United States Supreme Court called national attention to the fact that the juvenile court movement had become in large part a form without substance. The question before the court in *Kent* was whether there had been a proper waiver of jurisdiction from the juvenile court to a criminal court in the case of a sixteen year old boy charged with housebreaking, robbery and rape. The applicable

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1. BLACK'S LAW DICTIONARY 1269 (Rev.. 4th ed. 1968).

2. 383 U.S. 541 (1966).

statute permitted waiver by the juvenile court "after full investigation." There is no doubt that the requirements enumerated in the opinion which are applicable to juvenile courts are compelled by the due process clause of the United States Constitution. These requirements are: (1) the juvenile must be given a hearing on the matter of waiver; (2) the juvenile's counsel must have access to the social records of probation or similar reports which presumably are considered by the juvenile court in deciding whether to waive jurisdiction; and (3) a statement of reasons has to be given by the juvenile court in the event it decides to waive jurisdiction. Implicit in the requirement of a hearing is the need to introduce evidence and make findings of fact.

In 1967, a year after *Kent*, the Court handed down *In re Gault*.[3] In *Gault*, the Court dealt with the rights of juveniles in the adjudicatory phase of the juvenile court process, in which delinquency is determined. The Court held that the fourteenth amendment due process clause is applicable to proceedings in state juvenile courts in an adjudication of delinquency. The decision applies in all cases which "may result in commitment to an institution in which the juvenile's freedom is curtailed." This new concern for the child's right to a fair trial culminated in the Court's holding that due process requires that juveniles be afforded the procedural rights of notice, counsel, silence and cross-examination of sworn witnesses.

The Court further expanded the rights of juveniles in the case of *In re Winship*[4] which involved a twelve year old boy who was charged with delinquency for allegedly taking money from a woman's purse. He was found to be delinquent upon the preponderance of the evidence by the New York family court, which acts as the juvenile court in that state. The Supreme Court reversed, holding: "[T]he Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."[5] Therefore, in cases where a juvenile is charged with an offense which would be a crime if he were an adult, proof beyond a reasonable doubt is required.

3. 387 U.S. 1 (1967).
4. 397 U.S. 358 (1970).
5. *Id.* at 364.

The Supreme Court considered constitutional standards in the juvenile court again when it was presented with the question as to whether a juvenile accused of delinquency has a constitutional right to trial by jury. This issue arose in the case of *McKeiver v. Pennsylvania.*[6] The Court decided that trial by jury is not constitutionally required in the adjudicatory phase of such a proceeding. Many interested in the infusion of due process into the juvenile justice system viewed this decision as a major set-back in affording juveniles the guarantees granted adults in criminal proceedings. The cases of *Kent, Gault* and *Winship,* taken in conjunction have, however, revolutionized adjudication in juvenile courts. Moreover, this revolution is continuing in state legislatures.

Considerable attention has been given by state legislatures in the last decade to redrafting juvenile court laws. Juvenile courts are creatures of statute and must look to state codes for the delineation of their powers and duties. In the past there has been a haphazard development of the roles of the judiciary, the bar and social service personnel in the court process. Confusion about the proper professional functions of the various individuals who are supposed to make the juvenile justice system work has resulted from the failure of legislatures to properly define these roles statutorily. Similarly, neglecting to recognize the need for checks and balances in juvenile justice legislation has contributed to criticism of the juvenile court as being an ineffective, even unworkable, judicial system. Honoring the procedural aspects of the constitutional mandates established by the Supreme Court, and paying close attention to the details of drafting clear-cut professional responsibilities, can effect substantial improvement in the administration of juvenile justice.

I. Legislative History in Virginia

In 1974, the Committee Studying Services to Youthful Offenders, a committee of the Virginia Advisory Legislative Council,[7] appointed a Subcommittee on Juvenile Code Revision. The subcommittee was charged "to study the entirety of Chapter 8 of Title 16.1 [of the Code of Virginia] and the function of the Division of Youth

6. 403 U.S. 528 (1971).
7. Va. Code Ann. § 30-29 (Cum. Supp. 1979).

Services [of the State Department of Corrections] and to recommend such changes and revisions of the law and the Division as to it may seem proper."[8] The laws governing juvenile and domestic relations district courts operative in 1974 had not been revised as a whole by the legislature since 1956.[9] Piecemeal revision by the Virginia General Assembly during the 1960's and 1970's, which addressed the landmark United States Supreme Court decisions noted earlier and the development of new concepts of juvenile justice, had left Virginia's laws in a less than orderly and comprehensive form. The Virginia Court System Study Commission established by the 1968 session of the General Assembly[10] had made significant proposals for the reorganization of the state's court system which were enacted into law to a substantial degree by the 1972 session.[11] A uniform system of juvenile and domestic relations district courts was established, and provision was made for a full-time juvenile district court judiciary by July 1, 1980.[12] While the juvenile court structure had been formalized and the requirements for judicial and other professional staff serving the court were being upgraded by the General Assembly by enacting a number of the Commission's recommendations, the statutes constituting the court's legal foundation were not systematically organized and did not express a consistent philosophy. In 1974 the time had come for the legislature to undertake comprehensive review of these laws.

The Subcommittee on Juvenile Code Revision was given this task and was comprised of two legislators, a circuit court judge, a juvenile court judge, the director of a juvenile court services unit, a Commonwealth's attorney, a police officer assigned to a juvenile unit, the director of services for children in the State Department of Corrections, the state's assistant attorney general representing juvenile court judges and the state's juvenile corrections programs, and two attorneys in private practice. The product of this legislative study group reflects, to a significant degree, the character of the membership: great experience in all phases of the juvenile justice

8. S.J.Res. 17, 1974 Va. Acts at 1573.
9. 1956 Va. Acts, ch. 555, at 822.
10. S.J.Res. 5, 1968 Va. Acts at 1592.
11. COURT SYSTEM STUDY COMMISSION, HOUSE DOC. No. 6 (1972).
12. 1972 Va. Acts, ch. 708, at 963.

system, a thorough understanding of the statutory and case law applicable to this system, and an appreciation of the political realities associated with successful reform of the juvenile justice system in the Commonwealth.

Upon completion[13] of the subcommittee's work and approval of its proposals by the Virginia Advisory Legislative Council, a comprehensive revision of the juvenile court laws was proposed to the 1976 Session of the General Assembly.[14] Because of the complex nature of the legislation, the bill was carried over to the 1977 session in the committees for Courts of Justice of the House of Delegates and the Senate. A thorough review of the measure by the members of these legislative standing committees during 1976 placed the bill in a posture for favorable consideration by the 1977 legislature.[15]

In revising the Virginia law on juvenile and domestic relations district courts, certain principles were followed in order to address the problems of troubled children and to consider the need to protect society from dangerous youth. They were: the maintenance and support, wherever possible, of the family unit; provision of a stable residential placement for a child who must be removed from his home; involvement of parents in the programs designed to resolve the difficulties of a child before the court; the need for diversion from the court system; and the development of community-based programs, educational opportunities and residential alternatives.[16] The legislation conferred upon the juvenile court a greater responsibility for advocating the best interests of children and for monitoring these programs in which children are placed.

13. Before completion, several public hearings conducted across Virginia at the beginning of the subcommittee's work provided opportunities to hear the views of professionals in the criminal justice field and citizens concerned about children and the impact of juvenile crime on the community. This hearing process was repeated upon completion of a draft proposal in 1975 which was widely distributed to legislators, criminal justice professionals, and other interested citizens for their study and comment. Valuable contributions were made to the subcommittee's work by citizens who participated in the public hearings and by those who submitted written comments. The legislative proposals were modified to reflect the concerns of the public where the subcommittee felt it to be appropriate.

14. H.B. 518; S.B. 274 (1976) Va. General Assembly.

15. 1977 Va. Acts, ch. 559, at 839.

16. VIRGINIA ADVISORY LEGISLATIVE COUNCIL, SERVICES TO YOUTHFUL OFFENDERS: REVISION OF THE JUVENILE CODE, SEN. DOC. NO. 19 (1976).

This article will highlight the significant changes made in Virginia statutes in 1977 which should be of interest to the attorney practicing in the juvenile court. Amendments of particular interest enacted during the 1978 and 1979 Sessions of the General Assembly will also be noted.

II. Analysis of the Statutes

The legislation passed by the 1977 Session of the General Assembly repealed Chapter 8 of Title 16.1 of the Code of Virginia and enacted Chapter 10. The new chapter was reorganized to group related provisions within the articles and to provide, in chronological order, the procedures to be used in dealing with children and adults who come within the jurisdiction of the juvenile court. The new law made no structural changes in the existing court system or in its auxiliary system of court services units.

A. *Article 1—General Provisions*

This article contains the key to understanding the philosophy and mechanics of the remainder of the chapter. Section 16.1-227 states: "It is the intention of this law that in all proceedings the welfare of the child *and the family* is the paramount concern of the State . . ." (emphasis added). The emphasis on the welfare of the family is new to the statement of the purpose and intent of the law and is stressed in later statutes.[17] Another purpose set forth in this section expresses specific concern for the child-family relationship by discouraging the separation of the child from his family unless "the child's welfare is endangered or it is in the interest of public safety."[18] There is also a new emphasis on the diversion from the juvenile justice system of children whose misconduct is brought to the attention of the court.[19] Later statutes which detail how children may be detained[20] and which specify particular intake procedures[21] embody this new focus of the law.

A substantially expanded section on definitions is important in

17. Va. Code Ann. §§ 16.1-241(F), 16.1-279(C)(2) and (E)(3), 16.1-281 (Cum. Supp. 1979).
18. Va. Code Ann. § 16.1-227(3) (Cum. Supp. 1979).
19. Va. Code Ann. § 16.1-227(1) (Cum. Supp. 1979).
20. Va. Code Ann. § 16.1-248 (Cum. Supp. 1979).
21. Va. Code Ann. § 16.1-260 (Cum. Supp. 1979).

understanding the succeeding statutes. In section 16.1-228 three categories of children are defined: the abused and neglected child,[22] the child in need of services[23] and the delinquent child.[24] These categories establish distinctive tracts through the juvenile justice system which are followed in the articles governing immediate custody, arrest, detention and shelter care; intake, petition and notice; and disposition. An oftenheard criticism during the legislative public hearings on the proposed revision was that the existing procedures for dealing with any given child were not always designed to fit his particular problems, but invariably had the stigma of delinquency. For the child who has been abused or neglected, or who is the subject of the court's jurisdiction because of difficulties at home or in school which involve no violation of the criminal laws, such a stigma is not productive.

The definition of an "abused or neglected child" and the correlative procedures in the juvenile court law for serving this child correspond with the comprehensive child abuse and neglect act found in the welfare laws of the Code of Virginia which were enacted in 1975.[25]

A "child in need of services" includes a child who is habitually truant, habitually disobedient, or who remains away from home or habitually deserts or abandons his family. This definition embodies three descriptions of unlawful behavior contained in the jurisdictional section of the old law.[26] The revised law narrows the traditional status offender group of offenses by tightening the definitions and by requiring that the court make certain findings with regard to the need for judicial intervention before jurisdiction can be assumed. This latter addition to the law represents a compromise in the legislature between two points of view as to how status offenders should be handled by the justice system. One viewpoint would entirely remove from the court all jurisdiction over status offenses on the basis that such minor acts can be more fairly, effectively and

22. VA. CODE ANN. § 16.1-228(A) (Cum. Supp. 1979).
23. VA. CODE ANN. § 16.1-228(F) (Cum. Supp. 1979).
24. VA. CODE ANN. § 16.1-228(H) and (I) (Cum. Supp. 1979).
25. 1975 Va. Acts, ch. 341, at 566.
26. VA. CODE ANN. § 16.1-158(f), (g) and (h) (Cum. Supp. 1976) (repealed 1977 Va. Acts at 886).

economically dealt with by nonjudicial agencies.[27] Another perspective considered by the revisers contends that the juvenile court is in a unique position to help nondelinquent children by stemming their involvement in serious criminal activity, and the full powers of the court should be retained over them.[28] The compromise provides: (i) that the child's conduct must present a clear and substantial danger to his life or health; or (ii) that the child or his family needs assistance not being received, and (iii) the intervention of the court is essential to the provision of that assistance before jurisdiction can be assumed. Petitions against a child for being in need of services should be filed only after all other community services and resources have been exhausted.

A fourth category of behavior included in the "child in need of services" category is the child who commits an act, which is otherwise lawful, but which is designated a crime only if committed by a child. This narrows the types of offenses designated delinquent acts, and makes such offenses as violations of juvenile curfews and drinking beer underage status offenses.

The offenses characterized as "delinquent acts" and for which a "delinquent child" may be adjudicated are limited to those which are also classified as crimes for adults. By clearly delineating the acts of children which are to be classified as status offenses and as crimes, the revisors sought to eliminate the gray areas between delinquent behavior and other acts and omissions which bring a child within the jurisdiction of the court.

New definitions included in section 16.1-228 of "adoptive home", "foster care", "intake officer", "legal custody", "permanent foster care placement", "shelter care" and "residual parental rights and responsibilities" provide clarity for the procedures and dispositional alternatives later detailed in the chapter.

27. RECTOR, PINS: AN AMERICAN SCANDAL (National Council on Crime and Delinquency, 1974); INSTITUTE OF JUDICIAL ADMINISTRATION—AMERICAN BAR ASSOCIATION JUVENILE JUSTICE STANDARDS PROJECT, STANDARDS RELATING TO NONCRIMINAL MISBEHAVIOR (1977).

28. Martin, *Jurisdiction Over Status Offenders Should Not Be Removed From the Juvenile Court*, 22 CRIME & DELINQUENCY 44 (1976).

B. *Article 2—Organization and Personnel*

This article concerns the administration of the courts and the court services units and is not of general interest to the practicing attorney. The provision for a citizens advisory council found in section 16.1-240, however, is noteworthy. The governing bodies of localities which are served by court services units are permitted to appoint citizen advisory councils. These councils have the duty to advise and cooperate with the court upon matters affecting children and domestic relations; to consult with the court and director of the court services unit on the development of the court services program; and to designate a member of the council to visit institutions and programs in which the court places children. This provision consolidates two sections in the old statutes governing juvenile courts[29] and continues the interest of the legislature in providing for the positive involvement of citizens in the judicial system. Such a citizens group can be an asset to the local juvenile court, and to the members of the bar who practice before it, by encouraging the development of supportive programs and overseeing the quality of justice administered.

C. *Article 3—Jurisdiction and Venue*

The core of the juvenile code is section 16.1-241, jurisdiction of the juvenile court. This statute details those instances in which a child, parent or other adult may come within the purview of the law.

Jurisdictional authority over children is specified by age, definitional category and situation of need. While "child" is defined as a person less than eighteen years of age in section 16.1-228(D), the jurisdiction section clarifies that this age relates to the date of the commission of the offense. Once jurisdiction has been obtained over a child by the court, however, such authority may be retained in some instances until the person becomes twenty-one.[30] The categories of children defined as abused or neglected, in need of services, or delinquent are subject to the jurisdiction of the court for purposes of "custody, visitation, support, control or disposition."[31] The refer-

29. VA. CODE ANN. §§ 16.1-157,16.1-203 (Repl. Vol. 1975) (repealed 1977 Va. Acts at 886).
30. VA. CODE ANN. § 16.1-242 (Cum. Supp. 1979).
31. VA. CODE ANN. § 16.1-241 (Cum. Supp. 1979).

ence to jurisdiction over proceedings involving visitation is new—replacing an old provision which provided authority to grant visitation privileges only to grandparents.[32] In conjunction with a similar reference later in this same section, the court's power is broadened to adjudicate any legitimate visitation controversy concerning a child. Jurisdiction is continued from the old law over children in situations of need where: their parents have abandoned them;[33] their custody or support is the subject of controversy or requires determination;[34] their parents, for good cause, desire to be relieved of their care and custody;[35] they are mentally ill or mentally retarded and commitment or certification for treatment is sought;[36] they need judicial consent for activities to which a parent would otherwise consent ;[37] judicial consent is required for emergency medical treatment for the child[38] or for the sexual sterilization of a minor who is married;[39] or they require a work permit.[40] In the case of judicial consent for medical treatment, the authority of the judge has been expanded to include consent for emergency care when the parents fail to give such consent or provide such treatment when requested by the judge to do so.

An important addition to the juvenile court's authority includes jurisdiction over children who are voluntarily surrendered by their parents pursuant to entrustment agreements between the parents and public or private child-placing agencies.[41] Entrustment agreements have been designed to permit parents to relinquish custody of their children for a specified period of time without the need of court proceedings. New statutory provisions later in the chapter, however, require that such agreements which are effective for ninety days or more, and which do not provide for the termination of all parental rights and responsibilities, be approved by the court.[42] This

32. VA. CODE ANN. § 16.1-158.1 (Repl. Vol. 1975) (repealed 1977 Va. Acts at 886).
33. VA. CODE ANN. § 16.1-241(A) (Cum. Supp. 1979).
34. VA. CODE ANN. § 16.1-241(A)(3) (Cum. Supp. 1979).
35. VA. CODE ANN. § 16.1-241(A)(4) (Cum. Supp. 1979).
36. VA. CODE ANN. § 16.1-241(B) (Cum. Supp. 1979).
37. VA. CODE ANN. § 16.1-241(C) (Cum. Supp. 1979).
38. VA. CODE ANN. § 16.1-241(D) (Cum. Supp. 1979).
39. VA. CODE ANN. § 16.1-241(D)(1) (Cum. Supp. 1979).
40. VA. CODE ANN. § 16.1-241(H) (Cum. Supp. 1979).
41. VA. CODE ANN. § 16.1-241(A)(4) (Cum. Supp. 1979).
42. VA. CODE ANN. § 16.1-277 (Cum. Supp. 1979); §§ 63.1-56, 63.1-204 (Cum. Supp. 1979).

new authority is representative of the greater responsibility placed upon juvenile courts for monitoring the number of children entering the foster care system and the care they receive therein. Also new to the jurisdiction section is power over cases where termination of residual parental rights and responsibilities is sought.[43] This authority will be discussed later.

Jurisdiction over adults is expanded in section 16.1-241(F) to include parents who have abused or neglected their children, who desire to be relieved of the care and custody of their children, and who have children who have been adjudicated in need of services or delinquent and where the court finds the parents have contributed to the conduct complained of against the child. This new power in the court should be read in conjunction with other new statutory provisions[44] which are intended to give the court the authority to get at the root of the difficulties within the family structure or in the child's misbehavior. Treatment or punishment of a child will seldom be effective if the discordant home environment which precipitated the need for intervention of the court is not addressed.

The authority of the juvenile court is extended to include jurisdiction over petitions filed by or on behalf of a child or his parents in order to obtain treatment, rehabilitation, or other services which are required by law. This addition is intended to strengthen the role of the court as an advocate for children and families, and will be more fully discussed in the analysis of Article 9.[44.1]

The venue of juvenile proceedings is considered in section 16.1-243. In cases where delinquency of a child is alleged, the proceeding may be commenced in the county or city where the child resides, instead of where the alleged delinquent act occurred, when the child and the Commonwealth's attorney for both jurisdictions consent in writing. In nondelinquency proceedings, the action is to be set in the city or county where the child resides or where the child is present. In the latter situation the proceedings may be transferred, after adjudication, to the jurisdiction where the child resides.

In section 16.1-244, cases of visitation and support were added to

43. VA. CODE ANN. § 16.1-241(A)(5) (Cum. Supp. 1979).

44. VA. CODE ANN. § 16.1-279(C)(2a) and (E)(3) (Cum. Supp. 1979).

44.1. *See, infra*, subsection I.

the matters of custody and guardianship as being subject to concurrent jurisdiction of the juvenile and circuit courts. While the revisers clarified in the statute the fact that the entry of a circuit court order in such cases divests the juvenile court of jurisdiction, they also saw the need to empower the juvenile court to place a child temporarily in the custody of any person, when that child has been adjudicated abused, neglected, in need of services, or delinquent subsequent to the entry of a circuit court order relating to the custody of the child.

D. *Article 4—Immediate Custody, Arrest, Detention and Shelter Care*

Specific sections in this article detail the procedures to be followed, and the safeguards to be observed, in taking and detaining children in custody, and the places of permissible confinement for different categories of children. The desire to divert children in need of services from the criminal justice system is clearly expressed in section 16.1-246(B). A child who is alleged to be in need of services may be taken into immediate custody only when: (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. This limitation contrasts with broad language in the old law which allowed a police officer to take custody of a child when he "[found] the child in such surroundings or condition that he [considered] it necessary [to] take the child into immediate custody for the child's welfare."[45]

An amendment enacted during the 1978 Session of the General Assembly addressed the concern of citizens and law enforcement personnel that paragraph (B) of section 16.1-246 was too narrowly drawn. Paragraph (G)[46] was added to permit a law enforcement officer to take custody of a child who has run away or is without adult supervision at such hours of the night and under such circumstances that the officer concludes there is a clear and substantial danger to the child's welfare. The taking into custody of such a child, however, does not automatically confer jurisdiction upon the juvenile court. Moreover, the disposition of the child by law enforce-

45. VA. CODE ANN. § 16.1-194(3) (Repl. Vol. 1975).
46. 1978 Va. Acts, ch. 643, at 1040.

ment personnel has been strictly limited. In these instances the officer must notify the juvenile court intake officer to determine if a petition should be filed on behalf of the child. If not, the child must be returned home, be released to his parents, be placed in shelter care for no longer than twenty-four hours pursuant to a detention order, or be released on his own. Confinement in a detention home or jail is prohibited.[47]

Other circumstances in which section 16.1-246 permits a child to be taken into custody include when a detention order or warrant has been properly issued,[48] when an arresting officer observes a child committing a crime and believes arrest is necessary for the protection of the public interest,[49] when there is probable cause to believe the child has committed a felony,[50] or when the child runs away from a facility or home where he has been placed by the State Board of Corrections, the court, or a social service agency.[51] When a child is taken into custody pursuant to section 16.1-246, the law specifies the necessary judicial process required to validate that action—whether the court is open or closed, who is to be notified, and with whom or where that child may be placed.[52] Restrictions are placed upon who may issue detention orders[53] and warrants[54] for children in order to further limit the entanglement of children with the legal system. A series of amendments enacted by the 1979 Session was aimed at clarifying the role of the magistrate in the juvenile justice system in issuing warrants.[55] These statutes help delineate the responsibilities of law enforcement and juvenile court personnel in making decisions to take children into custody.

A new section in the law states specific criteria for detaining children in a detention home or in shelter care, and reflects the intent of the legislature to mimimize the involvement of children in the criminal justice system. Section 16.1-248 presumes that the

47. VA. CODE ANN. § 16.1-247(I) (Cum. Supp. 1979).
48. VA. CODE ANN. § 16.1-246(A) (Cum. Supp. 1979).
49. VA. CODE ANN. § 16.1-246(C) (Cum. Supp. 1979).
50. VA. CODE ANN. § 16.1-246(D) (Cum. Supp. 1979).
51. VA. CODE ANN. § 16.1-246(E) and (F) (Cum. Supp. 1979).
52. VA. CODE ANN. § 16.1-247 (Cum. Supp. 1979).
53. VA. CODE ANN. § 16.1-255 (Cum. Supp. 1979).
54. VA. CODE ANN. § 16.1-256 (Cum. Supp. 1979).
55. 1979 Va. Acts, ch. 701 at 1020.

child should be released after his case is considered by a judge, intake officer or magistrate and the necessary facts of the case have been ascertained. Such release shall be to the child's parent or other suitable person, either on bail or recognizance, or under other appropriate conditions.

A child may be detained pursuant to a detention order or warrant, however, where: (i) the child has no parent or other suitable person able and willing to provide supervision and care; (ii) the release of an allegedly delinquent child would constitute an unreasonable danger to the person or property of others; and (iii) the release would present a clear and substantial threat of serious harm to the child's life or health. These criteria are to govern the decisions of all persons involved in determining whether continued detention or shelter care is warranted,including decisions made at detention hearings held pursuant to section 16.1-250. Evidence against releasing the child must be clear and convincing. These provisions are designed to reduce the number of children in detention by establishing specific standards for use by law enforcement officers, court service personnel and the judiciary. If it cannot be affirmatively shown that the child's situation falls within the criteria established, the child should be released. A child should be deprived of his freedom only where the state can show, by clear and convincing evidence, that he should be detained.

When it is necessary to detain a child for the specific reasons set forth in section 16.1-248, the place of confinement must fit the child's situation. While the public must be protected from the acts of dangerous youth, the children themselves must be protected from nonessential and potentially damaging confinement. A new statute detailing the places of confinement for children attempts to achieve this balance. Section 16.1-249 permits the placement of any child, pending a court hearing, in an approved foster home, a facility licensed by a child welfare agency, or any other suitable place designated by the court, approved by the Department of Corrections and not otherwise prohibited by the statute. An abused or neglected child may not be placed in a detention home or jail.

A child alleged to be in need of services may be detained in a detention home only for good cause and for a period of up to seventy-two hours prior to a detention hearing, and may not be placed in

jail. The original proposal of the revisers to the 1977 session of the General Assembly provided for no secure detention of children alleged to be in need of services. This compromise of a limited detention of these children is intended to give those communities which have inadequate, nonsecure shelter facilities available for youth, an opportunity to develop them. This is the only provision in Virginia's juvenile court law not in compliance with the Juvenile Justice and Delinquency Prevention Act of 1974. This federal law prohibits the confinement of status offenders in juvenile detention or correctional facilities.[56]

A delinquent child who is fifteen years of age or older may be detained in jail under three specified conditions set out in section 16.1-249(B). While the first two conditions are concerned with the availability of alternative holding facilities and the severity of the child's alleged offense, the third condition addresses itself to the distance between the detention home and the place where the child is taken into custody. If that distance is at least twenty-five miles and the detention home is in another county or city, the child may be placed in jail for up to seventy-two hours. This time period was originally limited to eighteen hours[57] but was extended by the 1979 Session.[58] In parts of rural Virginia where detention homes are operated on a regional basis and are not readily accessible to courts with limited personnel for transporting children, this expansion of the jailing of alleged delinquent children was perceived to be necessary. The law prohibits the transportation of children under the age of fifteen years in a police patrol wagon, and allows no child to be transported with adults suspected of or charged with criminal acts.[59]

A child who is taken into custody and not released must have a detention hearing before a judge within seventy-two hours.[60] The child, if twelve years of age or older, and his parents are entitled to notice of the hearing. At the time of the hearing the parties must be informed of the right to counsel, of the contents of the petition, and of the child's right to remain silent with respect to any allega-

56. Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. §5601 *et seq* (1976)(amended 1977)).

57. VA. CODE ANN. § 16.1-248(B)(3) (Cum. Supp. 1978).

58. 1979 Va. Acts, ch. 655, at 946.

59. VA. CODE ANN. § 16.1-254 (Cum. Supp. 1979).

60. VA. CODE ANN. § 16.1-250 (Cum. Supp. 1979).

tion of delinquency. Hearsay evidence is admissible during the hearing. Amendments to this section during the 1979 Session[61] clarified that a child in need of services, who has been held in a detention home prior to the detention hearing, shall be released and shall not be returned to the detention home after the hearing. The judge may impose certain conditions on the child's behavior, however, pending adjudication.

The provisions in Virginia's juvenile court law concerning the taking of children into custody are not directed solely at children alleged to be delinquent or in need of services. Several provisions in this article govern abused or neglected children. When the legislature enacted a comprehensive child abuse and neglect law in 1975,[62] general statutory authority was provided for an allegedly abused or neglected child to be taken into custody for no more than seventy-two hours by a physician, protective services worker of a local social services department, or a law enforcement official, subject to certain conditions.[63] To fulfill the intent of this law, and to provide safeguards to be observed when a child is taken or is to be taken from his parents, three new statutes were included in the juvenile court law. If it is not possible to have a court hearing prior to the removal of a child from his home, section 16.1-251 provides for an emergency removal order. Such an order must be followed by an adversary hearing in order for a preliminary removal order to issue pursuant to section 16.1-252. If a child requires protection from suspected abuse or neglect pending final determination of a petition, but can be left safely in his home with certain limitations, the court can enter a preliminary protective order under section 16.1-253. These statutes contain standards establishing the nature of the conduct by the parents which justifies the removal of the child, and specify the conditions which may be imposed on the parents to protect the child from further harm. In these provisions, the revisers sought to strike a balance between the need to protect children from abuse and neglect and the purpose of the law to separate a child from his parents only when the child's welfare is endangered.[64]

61. 1979 Va. Acts, ch. 338, at 500.
62. Note 24 *supra.*
63. VA. CODE ANN. § 63.1-248.9 (Cum. Supp. 1979).
64. Note 17 *supra.*

E. *Article 5—Intake, Petition and Notice*

This article of the juvenile court law gives formal status to the intake process—the receipt of complaints by the court against or on behalf of children and adults. With certain enumerated exceptions,[65] all matters alleged to be in the court's jurisdiction must be commenced by the filing of a petition. An "intake officer", a position now formally recognized in the law,[66] is given the specific responsibility of handling complaints and requests, and the processing of petitions. The Commonwealth's attorney is authorized, however, to file a petition on his own motion. Complaints alleging abuse or neglect of a child are referred initially to the local social services department in accordance with the child abuse and neglect law.[67] In the past, these functions had been handled at various times by the judge, the clerk of the juvenile court, and the staff of the court services unit.

In section 16.1-260(B) the intake officer of the court is given the discretion to deny the filing of petitions where a child is alleged to be abused, neglected, in need of services, or in certain instances, delinquent. This provision is intended to avoid the processing and hearing of frivolous petitions, to encourage diversion where such is appropriate, and to aid in conserving the court's time. The intake officer is required to accept a petition in four specified cases,[68] including where a complaint alleges that a child has committed a felony or a Class 1 misdemeanor. The restrictions on the intake officer's discretion in these four cases were added during the legislative process and are indicative of the varying confidence which legislators have in the ability of intake officers to perform the semi-judicial function of determining whether alleged facts amount to probable cause. When an intake officer refuses to file a petition against a child for a delinquent offense which the complainant believes is a felony or Class 1 misdemeanor,[69] the complainant has the right to appeal to a magistrate for a warrant. If the magistrate finds probable cause to believe that a felony or Class 1 misdemeanor has

65. VA. CODE ANN. § 16.1-260(E) (Cum. Supp. 1979).
66. VA. CODE ANN. § 16.1-228(L) (Cum. Supp. 1979).
67. VA. CODE ANN. § 63.1-248.6 (Cum. Supp. 1979).
68. VA. CODE ANN. § 16.1-260(B) (Cum. Supp. 1979).
69. VA. CODE ANN. § 18.2-11 (Repl. Vol. 1975).

been committed, he may issue a warrant for the child. Pursuant to the 1979 amendments to this statute, such a warrant must be delivered forthwith to the juvenile court, and the intake officer must accept and file a petition founded upon the warrant.[70] This appeal process, which in the original proposal involved the Commonwealth's attorney in lieu of the magistrate, represents a compromise as to how the intake officer's decision to deny the filing of a petition could most efficiently be reviewed.

In order for the intake officer to be free to elicit information from the child during the intake process, which might enable him to divert the child, statements made by the child to the officer prior to a hearing on the petition's merits are inadmissible at any stage of the proceedings.[71]

A petition initiates the formal judicial process. Section 16.1-262 specifies the facts which must be contained in a petition to the juvenile court. Petitions also must include a reference to the law designating the delinquent act or crime of which the child is accused and a statement as to whether the child is in custody and the details thereof. An amendment to this section enacted during the 1979 Session permits the Supreme Court of Virginia to formulate rules regarding petitions related to custody and support matters, where the provisions of section 16.1-262 regarding the mandated form and content of the petition are inappropriate.[72] As a result of the juvenile code revision, a standard form for court petitions is now used throughout the Commonwealth. The use of this form has assisted in the gathering of statewide statistical data and the uniformity of court practice.

The court is required to direct the issuance of summonses to the persons who are proper or necessary parties to the proceedings.[73] A copy of the petition must accompany each summons for the initial hearing. This new requirement is to assure that the parties summonsed to court are fully informed of the charges which have been brought, or of the issues which are otherwise before the court for adjudication. Notice of subsequent proceedings must also be pro-

70. 1979 Va. Acts, ch. 701, at 1020.
71. VA. CODE ANN. § 16.1-261 (Cum. Supp. 1979).
72. 1979 Va. Acts, ch. 615, at 890.
73. VA. CODE ANN. § 16.1-263 (Cum. Supp. 1979).

vided to all parties in interest, except in cases where a party is represented by counsel, and counsel has been provided with a copy of the petition and due notice as to the time, date and place of the hearing. In these cases, such action is deemed due notice to the party, unless counsel has notified the court that he no longer represents that party. A party, other than the child, may waive service of summons by a written stipulation or by voluntary appearance at the hearing.

Traditional service of the summons is provided for in section 16.1-264. The revisers added to the statute, however, that if after reasonable effort, a party, other than the person who is the subject of the petition, cannot be found, or his post office address cannot be ascertained, the court may order service of the summons by order of publication.[74]

The authority for the clerk of the juvenile court, and the court on its own motion, to issue subpoenas requiring the attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing is provided for in the newly added section 16.1-265.[75]

F. *Article 6—Appointment of Counsel*

Substantial rights and responsibilities of children and adults are involved in proceedings before the juvenile court. Adequate provision for the appointment of counsel is crucial to maintaining the integrity of the juvenile court process. The law requires the appointment of an attorney prior to the hearing of any case involving a child who is alleged to be abused or neglected, who is the subject of an entrustment agreement or a petition terminating parental rights, or whose parents otherwise desire to be relieved of his care and custody. Counsel for the child cannot be waived in such cases.[76] A child alleged to be in need of services or delinquent has the right to counsel prior to the adjudicatory or transfer hearing. The child may employ counsel of his own choice, or, if it is determined that the child is indigent and the parent does not retain an attorney for the

74. VA. CODE ANN. §§ 8.01-316, 8.01-317 (Repl. Vol. 1977).
75. *See also* VA. CODE ANN. § 16.1-69.25 (Repl. Vol. 1975).
76. VA. CODE ANN. § 16.1-266(A) (Cum. Supp. 1979).

child, the court is required to appoint counsel to represent him. In cases alleging delinquency or a need of services, the child is also entitled to waive his right to counsel if the child and his parent consent in writing and the court finds the interests of the child and his parent are not adverse.[77] The provision for waiver of counsel by the child is an addition to the law. Also new is a requirement that the court assess costs, not in excess of seventy-five dollars, against a parent who is financially able to pay for an attorney appointed by the court for his child, and who refuses to do so.[78]

In cases where a parent is charged with abuse or neglect, or is subject to the loss of residual parental rights and responsibilities for his child, he is entitled to court appointed counsel, if indigent.[79] As discussed in the analysis of Article 3—Jurisdiction and Venue,[79.1] the court has been given greater authority over parents of children before the court. Access to legal representation is just as essential for the parents as for the child in these cases, a fact which has been recognized by the revisers. The attorney appointed to represent a child or adult has a continuing responsibility to provide legal counsel to his client through all stages of the proceedings unless relieved or otherwise replaced as provided by law.[80]

G. *Article 7—Transfer and Waiver*

Many suggestions were made to the revisers of the juvenile court law regarding changes in the procedures by which a child is transferred from juvenile court to circuit court for the adjudication of a criminal offense. There was a general reluctance, however, to revise the transfer procedure now found in section 16.1-269. In past years there has been considerable litigation over the transfer issue, and the case law is nearly unanimous that failure to comply with the requirements of the transfer statute is jurisdictional, and that any such proceeding is void.[81] The revisers were concerned that any sub-

77. VA. CODE ANN. § 16.1-266(B) (Cum. Supp. 1979).

78. VA. CODE ANN. § 16.1-267 (Cum. Supp. 1979).

79. VA. CODE ANN. § 16.1-266(C) (Cum. Supp. 1979).

79.1. *See, supra*, subsection C.

80. VA. CODE ANN. § 16.1-268 (Cum. Supp. 1979).

81. Redmon v. Peyton, 298 F. Supp. 1123 (E.D.Va. 1969); Mathews v. Commonwealth, 216 Va. 358, 218 S.E.2d 538 (1975); Jones v. Commonwealth, 213 Va. 425, 192 S.E.2d 775 (1972);

stantial revision of this complex statute would result in additional litigation over its constitutionality.

Some amendments to the procedure, however, were proposed by the revisers and gained the approval of the legislature. The authority of the juvenile judge to transfer a case on his own motion[82] was repealed, and only the Commonwealth's attorney is now permitted to make such motions. Excluding the judge from initiating the transfer proceedings gives the Commonwealth's attorney an opportunity to weigh the chances of a successful prosecution in adult court, and tends to prevent transfers for serious offenses from becoming routine with some juvenile judges. In deciding whether to transfer a case, the court is permitted under the revised law, to consider the nature of the present offense as a single criterion of the amenability of the child to treatment or rehabilitation separate from such factors as the child's prior delinquency record and the nature of past treatment efforts. The statute permits certification to the circuit court without a finding of amenability in cases of armed robbery or murder, and in certain cases of forcible rape. Efforts during the 1979 session of the legislature to further relax the requirements for transferring children to the circuit court, or otherwise treat them as adults for the alleged commitment of criminal offenses, were not successful.[83]

Concern was expressed to the revisers that the circuit court had insufficient time after the receipt of a case from the juvenile court to consider whether or not to remand the case or advise the Commonwealth's attorney that he may seek an indictment. Therefore, the transfer procedure was amended to increase from ten to twenty-one days the length of time that the circuit court has to enter an order relating to transferred cases.

An amendment to section 16.1-269 during the 1979 session requires that the juvenile court set bail for a child after the completion of a hearing on the issue of whether to transfer the child to the circuit court.[84] This new requirement is to prevent a child from

Gogley v. Peyton, 208 Va. 679, 160 S.E.2d 746 (1968); Peyton v. French, 207 Va. 73, 147 S.E.2d 739 (1966).

82. VA. CODE ANN. § 16.1-176(a) (Cum. Supp. 1976).

83. S.B. 788, 789, 790, 791, Va. General Assembly (1979).

84. 1979 Va. Acts, ch. 384, at 566.

improperly languishing in detention prior to consideration of his case by the circuit court.

A new provision in the law makes clear that the trial or treatment of a child as an adult shall not preclude the juvenile court from taking jurisdiction of the child for the commission of subsequent offenses.[85]

What power does the circuit court have over a juvenile offender who has been properly transferred or who has waived jurisdiction[86] to that court? Section 16.1-272 states that authority. A child has a right to trial by jury in the circuit court on the issue of guilt or innocence. Upon a finding of guilty, however, the court, and not the jury, sentences the juvenile in accordance with state criminal laws or with the laws prescribed for the disposition of cases in juvenile court. This provision for jury verdicts and judge sentencing in juvenile cases is contrary to that used in the adult system in Virginia. The revisers saw that the problems peculiar to juvenile cases demand the expertise of the judge in sentencing and commitment. The inability of juries to adequately comprehend the differences in the sentencing of a juvenile defendant as an adult, and the treatment of that same child within the framework of the juvenile court laws, were thought to justify a sentencing procedure which varies from adult cases. When the circuit court decides to treat the juvenile offender as a child and places him on probation, provision is made for supervision by juvenile probation officers.[87]

H. *Article 8—Adjudication*

After the case of a child has been adjudicated, the court may require, before final disposition of the case, a report on the physical, mental and social conditions, and personality of the child, and the facts and circumstances surrounding the violation of law.[88] To protect the confidentiality of these social histories, the revisers provided that attorneys may not make copies of the investigations furnished them by the court clerk.[89]

85. VA. CODE ANN. § 16.1-271 (Cum. Supp. 1979).
86. VA. CODE ANN. § 16.1-270 (Cum. Supp. 1979).
87. VA. CODE ANN. § 16.1-272(B) (Cum. Supp. 1979).
88. VA. CODE ANN. § 16.1-273 (Cum. Supp. 1979).
89. VA. CODE ANN. § 16.1-274 (Cum. Supp. 1979).

A valuable resource for the court in making appropriate dispositions of children is found in section 16.1-275. This statute authorizes physical and mental examinations of children who are before the court and provides a mechanism for the payment of such care and treatment. In order to protect children from unwarranted stays in state mental hospitals under this statute, such placements for the purpose of obtaining a recommendation for treatment are limited to thirty days. Amendments to the statute during 1978 prohibit the detention or care of children in state hospitals, pursuant to this section, in any maximum security units where adults determined to be criminally insane reside. Children are required to be kept separate and apart from such adults.[90]

Standards for determining whether or not the court should approve entrustment agreements over which it has new jurisdictional authority are set forth in section 16.1-277. The findings required to be made by the court before approval include: (i) whether suitable alternative placements exist for the child; (ii) whether the child needs an alternative placement; and (iii) whether a transfer of legal custody and placement outside the child's present home would not detrimentally affect the child's life, health or development. Consistent with the purpose and intent of the juvenile court law, the family unit should be preserved and supported whenever this is practicable and possible. A child should have a stable environment in which to grow up. When a child is removed from his home either with or without his parent's consent for longer than a ninety-day period, his case should be reviewed by the court. The revisers found many instances in which children are entrusted to local social service departments, and are caught up in the foster care cycle for many years. Sometimes the condition that precipitates the entrustment and the child's entry into foster care is removed, but the child fails to return home. The parents may not want the child back, or they may believe that the child has been taken from them permanently. Sometimes agencies are not aware of the changed conditions either because the child has no caseworker at the time, or because heavy caseloads make it difficult to keep track of what is happening to a particular child and his parents. Many children who are the subject

90. 1978 Va. Acts, ch. 739, at 1224.

of entrustment agreements could be cared for in their homes if homemaker or day care services are made available or used. Court review of these agreements is intended to insure that all of these factors are considered and that the rights of the child and his parents are protected.

I. *Article 9—Disposition*

The juvenile court is given tremendous responsibility for the care, protection and assistance of children and families within its jurisdiction. It also has the duty to serve the community as a whole and protect its citizens from dangerous youth. The resources and sanctions available to the juvenile court to perform these functions are specified in this article.

While a comparable statute prior to 1977 required public officials and agencies to "render such assistance and cooperation to the court as will best further the object of this law,"[91] section 16.1-278 in the new law is more emphatic. It states in pertinent part:

> The judge may order, after notice and opportunity to be heard, any State, county or municipal officer or employee or any govermental institution to render only such information, assistance, services, and cooperation as may be provided for by State or federal law or any ordinance of any city, county or town.[92]

Even though the statute's wording is somewhat cumbersome—due to repeated redrafting of the section during the legislative process—its purpose remains clear. In order for the court to effectively dispose of the cases before it, and assist the parties subject to its jurisdiction, it must have the authority to require that services mandated by law be delivered by the responsible public employee or governmental agency. Where the assistance of an officer or employee is required on behalf of a person before the court, he may not hide behind the shield of insufficient time, inadequate staff, or lack of funds to provide services which are mandated by law. The traditional authority to cooperate with and make use of the services of

91. VA. CODE ANN. § 16.1-156 (Repl. Vol. 1975).
92. VA. CODE ANN. § 16.1-278(A) (Cum. Supp. 1979).

other public and private organizations and societies is also provided to the court.[93]

This expanded authority in the juvenile court over public agencies and employees is also to assist in effective disposition of petitions filed by or on behalf of a child or his parents to obtain treatment, rehabilitation or other services required by law—a new subject of the court's jurisdiction.[94] This new authority and responsibility recognizes the validity of the concept of the "right to treatment." With regard to the child who is subjected to the restraints of the juvenile justice system,

> the state, through its juvenile courts, must demonstrate that it is conscientiously striving to achieve the rehabilitation it promises, and that (though it makes no promise to actually bring about the reformation of the child) it will seek to employ the best institutional, probationary, medical, psychiatric, and other techniques in providing for each child to develop into a mature and law-abiding citizen.[95]

For the family which needs the assistance of local, state, or federally mandated programs, the court also has the duty to be the family's advocate and to attempt to make these services responsive to the citizens who require that aid. As the juvenile court in Virginia begins to more fully realize its potential for positively influencing the lives of the children and families in the community it serves, the value of this yet little utilized authority in section 16.1-278 will be realized.

The disposition statute has been restructured to parallel the jurisdiction section of the new law, and the more clearly defined categories of children subject to the court. For each object of the court's jurisdiction found in section 16.1-241, an appropriate dispositional alternative is set forth in section 16.1-279. Paragraphs (A), (C), and (E) set out the alternative court orders available for children found to be abused or neglected, children adjudicated in need of services or those found to be delinquent, respectively.

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93. VA. CODE ANN. § 16.1-278(B) (Cum. Supp. 1979).

94. VA. CODE ANN. § 16.1-241(G) (Cum. Supp. 1979).

95. Ketcham, *The Unfulfilled Promise of the Juvenile Courts*, 7 CRIME AND DELINQUENCY 97, 101 (1961). *See also* Pyfer, *The Juvenile's Right to Receive Treatment*, 6 FAMILY L. Q. 279 (1972).

The judge may enter an order pursuant to section 16.1-278, as previously discussed, for the benefit of all three definitional categories of children.[96] In keeping with the court's new jurisdictional authority over parents, a child who has been abused or neglected, and who has been removed from his home, may be returned to his parents subject to such conditions and limitations as the court may order with respect to the child and his parents. Legal custody of the child, however, may be transferred to an approved individual or agency, while the parents are ordered to participate in prescribed services or to refrain from certain conduct. The residual parental rights and responsibilities of the parents may also be terminated.[97]

When the court finds a child, who is fourteen years of age or older, to be in need of services and unable to benefit from further schooling after diligent efforts by school officials to meet the child's educational needs, the court may excuse the child from attending school and authorize the child to work pursuant to a work permit.[98] This provision is designed for the child who is habitually truant from school, who is disruptive in the classroom and on school grounds, and for whom all alternative educational programs have failed.

Paragraph (D) of section 16.1-279 states: "Unless a child found to be abused, neglected or in need of services shall also be found to be delinquent and shall be older than ten years of age, he shall not be committed to the State Board of Corrections." Prior to the new law, there was no minimum age for the commitment of children to the State Board. A minimum age of thirteen years for commitment was recommended by several groups which appeared before the revisers, and was given serious consideration. However, because of the current lack of alternative facilities for dealing with the seriously disturbed and potentially dangerous young child, in both the corrections and mental health fields, the minimum age was set at ten years.

The issue of whether a child in need of services should, under any circumstances, be committed to the State Board of Corrections was widely debated in the public hearings held by the Subcommittee on

96. VA. CODE ANN. § 16.1-279(A)(1), (C)(1) and (E)(1) (Cum. Supp. 1979).
97. VA. CODE ANN. § 16.1-279(A)(2), (A)(4) and (A)(5) (Cum. Supp. 1979).
98. VA. CODE ANN. § 16.1-279(C)(4) (Cum. Supp. 1979).

Juvenile Code Revision and among the revisers themselves. The report of the Virginia Advisory Legislative Council on Juvenile Code Revision stated:

> The Council supports the noncommitment of children in need of services on the basis that children involved in unacceptable, but noncriminal behavior, receive greater benefit from noncoercive, rehabilitative social services such as family counseling, youth service bureaus, health agencies, educational and employment opportunities and other forms of community treatment. The underlying philosophy of the juvenile court is that rehabilitative service, not punishment, should be provided nonconforming children to help them become law-abiding and productive citizens. Incarceration in a State institution of the truant, the runaway and the child who is beyond the control of his parents serves no humanitarian or rehabilitative purpose. It is unwarranted punishment and unjust because it is disproportionate to the harm done by the child's noncriminal behavior.
>
> The Council believes that the power of the juvenile court to commit children to State penal institutions where indeterminate sentences are served must be limited to criminal behavior that threatens the community. The problems of the child in need of services are in the home, the school and the community at large, and that is where they need to be resolved.
>
> The thrust of this major recommendation by the Council and of many of the supporting proposals is that children in need of services need to be diverted out of the juvenile justice system and into noninstitutional programs which are better equipped to handle them. The success of this diversion and of many other provisions being recommended in this report depends upon the development of new group homes and "attention homes" instead of detention homes. The schools must provide viable programs to teach the poorly motivated, educationally handicapped and culturally deprived child and learn to keep in tow the unruly youngster instead of pushing him out of school. Alternative educational programs must be developed. Community-based programs which provide treatment, educational opportunities and residential alternatives are essential to effectuate diversion from the court system and genuine rehabilitation of the unacceptable behavior of children before the court.[99]

99. Note 15 *supra*, at 12, 13.

In cases where a child is adjudicated delinquent and the court has jurisdiction over the parents for having contributed to the child's misconduct, the court may order the parent "to participate in such programs, to cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and parent" to facilitate the rehabilitation of the child.[100] An identical dispositional alternative for children in need of services was made available to the court by an amendment enacted during the 1979 session of the General Assembly.[101]

Traffic violations and infractions committed by juveniles are within the jurisdiction of the juvenile court. The disposition statute in section 16.1-279 (E) (8) limits the penalties which may be imposed for such offenses to those penalties authorized to be imposed on adults. A proposal by the Subcommittee on Juvenile Code Revision to transfer jurisdiction of traffic cases to the general district court was rejected by the legislature.

A 1978 amendment to the disposition section authorizes juvenile courts, in cases involving offenses committed by one spouse against another, to impose conditions and limitations in an effort to effect the reconciliation and rehabilitation of the parties. This includes treatment and counseling for either or both spouses, and payment by the defendant spouse for crisis shelter care for the complaining spouse.[102] Efforts by members of the legislature in 1979 to authorize additional resources for the juvenile court to dispose of spouse abuse cases were unsuccessful.[103]

Two other amendments to the 1977 revision of the disposition statute are noteworthy. Both were considered by the legislature in the 1978 and 1979 sessions before the controversy surrounding their enactment was resolved. The first amendment involves the question of who has the final authority to determine the appropriate placement of a child who is committed by the court to the custody of the local board of social services: the board or the judge. The legislature

100. VA CODE ANN. § 16.1-279(E)(3) (Cum. Supp. 1979).
101. 1979 Va. Acts, ch. 702, at 1024.
102. 1978 Va. Acts, ch. 756, at 1269.
103. H.B. 1946, 1979 Va. General Assembly.

resolved this issue in favor of the local board.[104] The second amendment concerns the authority of the courts to order joint commitments of children to the State Board of Corrections and a local welfare board, or to transfer custody of children jointly to juvenile court services units and local welfare boards. The legislature determined that such orders should be prohibited[105] because of the danger that a child for whom two agencies are responsible may become no one's responsibility. Access to funding for the care of certain children, which had previously been limited only to social service placements, is now more universally available pursuant to a legislative study conducted in this area.[106] The necessity for such orders has, therefore, been generally eliminated.

Three new provisions have been added to Article 9 relating to foster care and the termination of parental rights. Placement of children with the local social services department and, therefore, in foster care, is a dispositional alternative available to the juvenile court.[107] In June, 1978 there were 10,199 children in foster care in Virginia, [108] and approximately 4,000 new children are placed in the program every year. Although foster care is intended to be temporary, many children will spend the years to maturation in foster care, without the benefits of the permanency, stability, and continuity in life which are essential to normal development. Returning foster care children to their natural homes or providing a permanent home through adoption to break the foster care cycle has been the exception rather than the rule. To insure that foster children are not lost and forgotten by the system that is responsible for their welfare, the legislature recognized that there must be a periodic review of their status and of the steps being taken to find permanent homes for them.

To effectuate this review process, section 16.1-281 requires that goals be established for the child placed in foster care and his family, and a service plan must be developed to assure that the goals

104. 1979 Va. Acts, ch. 695, at 1004.

105. 1979 Va. Acts, ch. 696, at 1008.

106. REPORT OF THE JOINT SUBCOMMITTEE ON THE MEDICAL NEEDS OF CHILDREN, H. DOC. No. 28 (1979).

107. VA. CODE ANN. § 16.1-279 (Cum. Supp. 1979).

108. A Foster Care Review, Annual Report of the Commissioner of Welfare to the 1979 Session of the Virginia General Assembly (1977-78).

will be achieved. The agency which places the child is required to prepare the foster care plan in consultation with the child, the child's parents, and any other person standing *in loco parentis* at the time the agency obtained custody. The plan describes, among other things, the services and support to be offered the child and parents, the participation and conduct which will be sought from the parents, the visitation to be permitted between the child and his parents, and the nature of the placements to be provided for the child. The plan must be designed to return the child home, or to place him in an adoptive home or in permanent foster care placement. Such a foster care plan, keyed to the individual circumstances of each child and family, lays the foundation for later review of the child's status by the court. The juvenile court, pursuant to section 16.1-282, is required to review the case of every child in foster care who has not been placed in an adoptive home or permanent foster care placement twelve months after the filing of a foster care plan with the court. The intent of the foster care plan and of judicial review is to return the child to a stable home environment as soon as practicable, whether it be to his natural home, an adoptive home, or a permanent foster care placement. The court places the child in foster care and must become more involved with what happens to that child thereafter.

Amendments to section 63.1-195 and a new section 63.1-206.1 set up a new program for permanent foster care placements.[109] Such placements are made only by court order and are intended to provide an alternative to temporary foster care and its attendant instability for children and foster parents, and an alternative to adoption where the rights of the natural parents are terminated.

Section 16.1-283, allowing termination of the residual parental rights, is an important correlative provision to the previously discussed foster care sections. The old law lacked detailed procedures or clear guidelines for the termination of parental rights. The intent of this new section is to provide such procedures and guidelines and to protect the right of the parent to the custody of his child, as well as to protect the right of the child to a stable home environment. While some flexibility is needed in dealing with individual cases of

109. VA. CODE ANN. §§ 63.1-195, 63.1-206.1 (Cum. Supp. 1979).

neglect, abuse, entrustment or abandonment of children and any consequent termination of residual parental rights and responsibilities, evidence of certain conditions in the natural home can provide guidance for such decisions. Where parents suffer long-term mental or emotional illness, addiction to alcohol, narcotics or other dangerous drugs, willfully refuse to cooperate in future planning for the child, or fail to maintain contact with the child, without good cause, for specified periods of time, and fail to make reasonable progress towards eliminating the conditions which led to their child's foster care placement, serious consideration should be given to terminating their rights to the child. Depending upon the conditions which led to the child's placement in foster care, and upon the actions of the parents, provision is made for the commencement of termination proceedings within six to twelve months.

Several groups appearing before the Subcommittee on Juvenile Code Revision at its public hearings requested that the procedure for review of foster care cases be an administrative one within the State Department of Welfare. Serious consideration was given to this suggestion. It was concluded, however, that since the provisions for foster care plans, foster care review, permanent foster care placements, and termination of residual parental rights all deal with substantial legal rights and responsibilities of the parent and child, these programs and procedures must be judicially administered to be effective and to protect all the parties involved.

In section 16.1-284 the court retains the ability to sentence a child fifteen years of age or older to jail when he is found guilty of the commission of a misdemeanor or a felony. The revisers added to the statute findings which the court must make after the receipt of a social history and before the imposition of such a penalty. They include: (i) the child must not be amenable to treatment as a juvenile through available facilities; and (ii) the interests of the community must require that the child be placed under legal restraint or discipline. A child may be sentenced to jail for no longer than twelve months for single or multiple offenses and may not be confined for a misdemenor for a longer period of time than would be authorized for an adult.[110]

110. VA. CODE ANN. § 18.2-11 (Repl. Vol. 1975).

While commitments of children pursuant to the juvenile court law are for an indeterminant period up to the child's twenty-first birthday, children who are committed as abused, neglected or in need of services have the right upon request to be released at the age of eighteen years.[111] Flexibility for these categories of children was left in the law to protect their eligibility for financial resources, which may be made available to them through social service programs.

Since the court's option to commit children in need of services to the State Board of Corrections[112] was removed, a mechanism to provide for alternative nonsecure placements was needed. Section 16.1-286, proposed by the Subcommittee on Juvenile Code Revision and enacted a year before the comprehensive revision of 1977, was designed to fill this gap. This statute authorizes the court to place a child in an approved private or locally operated public facility when it determines that the behavior of a child cannot be dealt with in the child's own locality. If the placement is made pursuant to procedures established by the State Board of Corrections, the cost is paid by the state. The court is required to review these placements annually, and a roster of the whereabouts of all children placed under this provision must be maintained by the Director of Corrections. The ability to use state funds to finance private and local residential placements of children before the court should assist in the deinstitutionalization of status offenders.

The authority of the juvenile court to review commitments of children to the Board of Corrections and modify or revoke its orders was reviewed by the revisers. Discontent with the treatment of some juveniles in the corrections system led to suggestions that the court be permitted to reopen any case of commitment at any time. The revisers were unwilling to adopt this recommendation, but did agree to increase the length of time the court has to review an order of commitment to the state corrections agency from thirty to sixty days.[113]

111. VA. CODE ANN. § 16.1-285 (Cum. Supp. 1979).
112. 1976 Va. Acts, ch. 464, at 540.
113. VA. CODE ANN. § 16.1-289 (Cum. Supp. 1979).

J. *Article 10—Probation and Parole*

A proceeding to revoke probations, protective supervision, or parole must be commenced by the filing of a petition and is governed by the safeguards, rights, and duties applicable to the original proceedings.[114] A new provision in the law specifies that any person who violates a court order may be proceeded against by a show cause order, contempt of court, or both. The court is limited, however, with respect to a child who violates a court order to those actions which it could have taken at the time of the court's original disposition of the case.[115] This limitation on the court's power is to prevent children in need of services from being committed to the State Board of Corrections or to other secure detention facilities for violation of probation, when such dispositions are permissible pursuant to section 16.1-279.

When a delinquent child has been committed to the state corrections agency and is returned to the community for supervision, who is responsible for supervising him and for determining the terms and conditions of the supervision? The new law requires the director of the Department of Corrections to consult with the local juvenile court regarding the return of the child. The juvenile court then determines whether the juvenile court service unit or the local social services department will supervise the child. The court also determines what the terms and conditions of supervision will be. When a person has been placed on probation and is being supervised in one locality, and thereafter moves his residence to another locality, transfer of supervision may be arranged by the juvenile court of the locality from which the person moves or by the transferring court, rather than by the director of the Department of Corrections.[116]

K. *Article 11—Appeal*

The procedure which governs appeals of final orders and judgments of the juvenile court is in accordance with the procdure for the appeal of criminal matters from the general district court.[117] Where an appeal is taken by a child on a finding of delinquency,

114. VA. CODE ANN. § 16.1-291 (Cum. Supp. 1979).
115. VA. CODE ANN. § 16.1-292 (Cum. Supp. 1979).
116. VA. CODE ANN. § 16.1-295 (Cum. Supp. 1979).
117. VA. CODE ANN. § 16.1-296 (Cum. Supp. 1979).

trial by jury on the issue of guilt or innocence may be had on a motion by the child, the Commonwealth's attorney, or the circuit judge. If the jury should find the child guilty, the judge would determine disposition.[118]

An appeal in a nondelinquency matter will be heard in the circuit court according to the equity practice where the evidence is heard *ore tenus,* although, on the motion of any party, an issue out of chancery may be heard in the discretion of the judge.

Pending appeal, judgments of the juvenile court are suspended in certain cases including, among others, those involving delinquency in which the court orders the child to pay a fine, make restitution or reparation, be committed to the State Board of Corrections, or serve a jail sentence. All four of these provisions were added to the law in 1977. In nondelinquency matters, an appeal will generally not operate to suspend any judgment, order or decree without a specific order doing so. In all cases where the order of the juvenile court is suspended, bail may be required.[119]

L. *Article 12—Confidentiality and Expungement*

A significant new addition to the law is found in section 16.1-295 concerning the fingerprinting and photographing of children taken into custody. An attorney representing a juvenile client should be aware of the limitations in the law as to when a child may be fingerprinted, or photographed, or both, and when these records must be subsequently destroyed. In this section and in succeeding provisions dealing with law enforcement records,[120] juvenile and circuit court records,[121] and the expungement of certain documents,[122] the revisers sought to strike a balance between the need for investigative tools on the part of law enforcement officials, and the right of the child and family to privacy.

If the benevolent and rehabilitative purposes of the juvenile court

118. The rationale for this new procedure of jury verdicts and judge sentencing in juvenile cases was discussed *supra* in the analysis of Article 7—Transfer and Waiver. *See* subsection G.

119. VA. CODE ANN. § 16.1-298 (Cum. Supp. 1979).

120. VA. CODE ANN. § 16.1-301 (Cum. Supp. 1979).

121. VA. CODE ANN. § 16.1-305 (Cum. Supp. 1979).

122. VA. CODE ANN. § 16.1-306 (Cum. Supp. 1979).

are actually to be served, the revisers recognized that provision must be made for the expungement of court and arrest records. Such records can handicap the child who has been before the court as a delinquent or status offender for years to come. While the prior law made destruction of juvenile court records discretionary with the judge,[123] the new law makes mandatory the destruction of all records concerning a child found to be delinquent or in need of services, when such child becomes nineteen years of age and five years have elapsed since the last proceeding was disposed of by the courts. Such expungement does not apply to children found guilty of felonies. The remainder of the records are subject to being sealed and, under certain circumstances, later being destroyed.

An amendment to this statute during the 1979 session of legislature[124] provides that a person who has been the subject of a delinquency petition, which does not allege the commission of a felony and (i) who has been found innocent thereof, or (ii) the petition has otherwise been dismissed, may file a motion requesting the destruction of all records pertaining to the delinquency charge. This enables the person's records to be expunged immediately rather than after the otherwise necessary time period.[125] The law directs the court to notify persons of their rights under section 16.1-306 at the time of their dispositional hearing.

What is the penalty for violating the confidentiality requirements of the juvenile court law? Section 16.1-309 provides for the first time that such action shall be deemed a Class 3 misdemeanor, for which a fine of not more than five hundred dollars may be assessed.[126]

During the 1979 session of the General Assembly, a new section was added to the law which exempts judges from the confidentiality and penalty provisions of this article in certain situations.[127] Where consideration of the public interest requires it, the judge is permitted to make public the name and address of a child, and the nature

123. VA. CODE ANN. § 16.1-193 (Repl. Vol. 1975).

124. 1979 Va. Acts, ch. 737, at 1166.

125. *Cf.* VA. CODE ANN. § 19.2-392.2 (Cum. Supp. 1979) (expungement of criminal records requires that a petition be filed with the court to which the Commonwealth's attorney may file an answer or objection within twenty-one days).

126. VA. CODE ANN. § 18.2-11 (Repl. Vol. 1975).

127. 1979 Va. Acts, ch. 94, at 131.

of the offense for which he has been adjudicated delinquent if the act would be classified as a Class 1, 2 or 3 felony if committed by an adult.[128] In the law operative prior to 1977, the judge had the authority to make public the name of the juvenile, the names of his parents, and the nature of his offense, if the judge deemed it to be in the public interest.[129] The Subcommittee on Juvenile Code Revision recommended repealing such authority, and this was subsequently done by the 1977 session of the legislature. The restoration of a limited authority to disclose the names of juveniles was the result of a continuing controversy between the rights of citizens to be informed about the perpetrators of criminal offenses in their community and the freedom of the press to release that information, and the state's interest in protecting privacy and the rehabilitative nature of the juvenile court process.

III. Conclusion

The revision of the juvenile code followed many public hearings and visits to the public institutions that serve children across Virginia. This legislative effort which began in 1974, reflects the aroused concern of members of the General Assembly about the quality of care and justice received by children in Virginia. The legislation, as finally approved in 1977, was the result of considerable compromise, and its evolution is continuing, as evidenced by amendments to it during the 1978 and 1979 sessions of the General Assembly. It is not a perfect law, but is does represent a significant beginning toward meaningful change in the treatment of children by state and local agencies.

The growing concern across the nation for the large number of children who remain in state care until they reach adulthood, caused the revisers to venture into new areas of statutory reform to assure that children not remain in foster care when a permanent living arrangement is possible. The decision to inject the courts into the foster care process by requiring the filing of foster care plans and judicial review of those plans was not intended as an indictment of social services agencies. Rather, it was an attempt by the General Assembly to give foster care workers a greater opportunity to suc-

128 Va. Code Ann. § 18.2-10 (Cum. Supp. 1979).
129. Va. Code Ann. § 16.1-162 (Repl. Vol. 1975).

ceed, by vesting the courts with the authority to order services, outside the realm of welfare programs, as a means of augmenting proposed foster care plans.

Legislators were alarmed over the substantial number of inappropriate commitments of children to the State Board of Corrections for care and treatment. Too often the placement of a child depended upon the availability of public funds, while appropriate treatment in the proper facility was a secondary consideration. In 1975, the Department of Corrections reported that forty-eight percent of the children held in secure state correctional facilities were either retarded or emotionally disturbed. One-third of the juvenile correctional population consisted of children who had committed no offense for which they could have been jailed had they been adults.[130] They were status offenders—truants, runaways, and incorrigibles.

State mental hospitals were reluctant to accept these children, primarily because these institutions were not staffed or programmed to deal with an adolescent population separate from adult or criminal patients. The sad truth was that while state and local governments paid lip service to the need for mental health treatment facilities for children and adolescents, very little had been accomplished to provide the necessary services. Social service and court service personnel became increasingly frustrated in their efforts to locate appropriate treatment for children who lacked the financial resources to be treated in the private sector. As the level of frustration grew, the criminal justice system became the dumping ground for these difficult children. While the state mental hospitals could refuse to accept certain of these children, the Department of Corrections could not, nothwithstanding the fact that it offered marginal mental health services, if any. The study that preceded the passage of this legislation clearly revealed the folly of attempting to address the weaknesses in the old juvenile statutes without considering the complex reasons why children remained in foster care, or why they were inappropriately placed in state institutions.

When the legislature began its inquiry into the quality of foster care programs and the level of services provided juveniles in state

130. Characteristics of Children Committed in 1974 as Assessed by the Mobile Psychiatric Unit, Program Evaluation Unit, Division of Youth Services, Department of Corrections (July, 1975).

correctional facilities and state mental hospitals, it was dismayed to find vast disparities between what was believed to be available and what was actually provided by the state. The lack of appropriate facilities in the Commonwealth, and the failure to utilize existing programs, resulted in hundreds of children being sent to thirty-one states at a cost of more than five million dollars in 1975.[131] Once these children were sent away, there was little monitoring of their treatment and progress. One of the most difficult facts to accept was the reality that many children who come into the criminal justice system are there because they are unwanted and unloved. Often, their families have given up trying to cope with them and prefer to have them incarcerated, whether they have committed a criminal offense or not. If the state should accept responsibility for a child, it must not be allowed to do worse by that child than his family has done.

During the deliberations which occurred in the years between 1974 and the passage of comprehensive legislation in 1977, many of the deficiencies discovered in Virginia's juvenile justice system were improved by administrative order as well as by complementary legislative action. These efforts have, in the opinion of the authors of this article, resulted in much progress in the treatment of children by the criminal justice system, and in the social service and mental health systems of Virginia. A concerted effort has been made to bring consistency and balance to the juvenile court system of the post-*Gault* era. The legislature has not been obsessed with legal procedure, however, to the exclusion of concern for improving the care, treatment and rehabilitation of parties before the court. In the final analysis, the quality of justice administered by the juvenile courts of the Commonwealth must be measured by both the due process which characterizes their proceedings, and the value of the treatment which they supply. Continuing legislative reform of Virginia's juvenile court statutes and of supporting human service programs will be necessary as state and local governments seek to fulfill the responsibilities placed in them by the citizens they represent.

131. REPORT OF THE SUBCOMMITTEE ON PLACEMENT OF CHILDREN, H. DOC. NO. 16 (1977).