University of Richmond Law Review

Volume 19 | Issue 4 Article 7

1985

Annual Survey of Virginia Law: Legal Issues Involving Children

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LEGAL ISSUES INVOLVING CHILDREN

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This section focuses on Virginia and federal developments affecting children from January 1984 through June 1985. The discussion will concentrate on legal developments impacting on juvenile delinquency; abused, neglected and missing children; paternity; child support; and the problems of educationally disadvantaged and handicapped children. Child custody developments are addressed in the section on Domestic Relations.

I. JUVENILE DELINQUENCY

The detention of juveniles in secure juvenile facilities or adult jails came under close scrutiny this year in both the United States Supreme Court and the Virginia General Assembly. In *Schall v. Martin*,[1] the Supreme Court examined the New York law governing pretrial detention, and particularly the portion of that law which permitted youngsters to be detained based on predictions of dangerousness. The New York statute had been struck down as unconstitutional on due process grounds in both the district court[2] and the court of appeals.[3] The Supreme Court, per Justice Rehnquist, reversed, concluding that the provision served a legitimate state objective in protecting both the child and society from the potential consequences of delinquent acts and thus was compatible with the fundamental fairness dictated by the due process clause.[4] In addition, the law provided the requisite procedural safeguards demanded by the due process clause through the time limitations, notice, counsel, probable cause finding, parental presence, and hearing rights delineated in the legislation.[5] Despite Justice Rehnquist's rather curious statement that the juvenile's interest in freedom from institutional restraints "must be qualified by the recog-

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1. 104 S. Ct. 2403 (1984).
2. United States *ex rel.* Martin v. Strasburg, 513 F. Supp. 691 (S.D.N.Y. 1981).
3. Martin v. Strasburg, 689 F.2d 365 (2d Cir. 1982).
4. *Schall*, 104 S. Ct. at 2412.
5. *Id.* at 2416-17.

nition that juveniles, unlike adults, are always in some form of custody,"[6] and his reliance on *Santosky v. Kramer*[7] to reemphasize the role of *parens patriae* in juvenile matters,[8] the decision does emphasize that pretrial detention cannot be used legitimately as a form of punishment.[9] The procedural safeguards incorporated in a detention law and the conditions of detention confinement[10] may be significant in future examinations of state detention laws and practices.

The 1985 session of the Virginia General Assembly adopted some of the procedural concerns of the Supreme Court in *Schall* through the passage of House Bill 1417[11] which had as its principal purpose the removal of juveniles from adult jails in the commonwealth. The legislation went much further by establishing more specific and objective criteria for detention of juveniles, refining the procedural framework for making those detention decisions, assuring the greater availability of trained juvenile intake officers to make the initial determination regarding detention, specifying time limitations for secure detention, allowing the use of a detention home as a dispositional placement, and permitting the use of a determinate minimum commitment to the state for more serious and repeat offenders.

The 1985 law was the product of an effort over several years to remove jail as an acceptable placement for juveniles for either detention or dispositional purposes. The 1984 General Assembly adopted a study resolution recommending that the Departments of Corrections and Criminal Justice Services work with juvenile and domestic relations district court judges and others to come up with a proposal incorporating the study's findings.[12] The report of the study group[13] resulted in the introduction and passage of House Bill 1417.

After June 30, 1986, an adult jail may no longer be used as a dispositional alternative except in the case of an adult who com-

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6. *Id.* at 2410.
7. 455 U.S. 745 (1982) (involving termination of parental rights).
8. *See Schall*, 104 S. Ct. at 2410.
9. *Id.* at 2412-13.
10. *Id.* at 2413-14.
11. Ch. 260, 1985 Va. Acts 314 (codified as amended in scattered subsections of VA. CODE ANN. § 16.1 (Cum. Supp. 1985)).
12. Va. H.J. Res. 16, 1984 Va. Acts 2195.
13. H. Doc. No. 18, 1985 Virginia General Assembly.

mitted a criminal offense prior to turning eighteen.[14] After that date, no juvenile may be detained in such a facility unless the juvenile's case has been transferred to the circuit court for trial as an adult, or unless the juvenile is fifteen or older and is found to be a threat to the safety of other juveniles or the staff of a detention home. If a juvenile fifteen or older is charged with an act that would be a felony or class one misdemeanor if committed by an adult and the judge or intake officer determines it is necessary for the safety of the child or the community, such juvenile may be detained for no more than six hours in a room or ward, completely separated from adult prisoners and approved by the Department of Corrections for the detention of juveniles awaiting transfer to a juvenile facility. Constant supervision of the minor must be provided.[15]

Effective July 1, 1985, the new detention criteria mandate that a juvenile shall be released to return home after being taken into custody upon ascertainment of the necessary facts.[16] The child, however, may be detained if the judge, intake officer or magistrate[17] finds there is probable cause to believe that the juvenile committed the act alleged and the act alleged is a felony or class one misdemeanor, and there is clear and convincing evidence that the juvenile's release would constitute an unreasonable danger to the person or property of others; the release of the child would present a clear and substantial threat of serious harm to the juvenile's life or health; or the minor has threatened to abscond from the court's jurisdiction or has a record of willful failure to appear in court during the preceding twelve months. The juvenile may also be detained if, in addition to the probable cause finding, it is found that the child has absconded from a detention home, learning center[18] or other secure facility where placed by a lawful court order, or if he is a fugitive from a jurisdiction outside Virginia and is subject to a verified petition or warrant, in which case the child may be detained for a period of no more than ninety days while arrangements are made to return the child to his parents or other

14. VA. CODE ANN. § 16.1-284 (Cum. Supp. 1985).

15. *Id.* § 16.1-249.

16. *Id.* § 16.1-248.1.

17. Magistrates may only be involved in detention decisions when the court is not open and the judge, intake officer, or clerk of the juvenile court are not reasonably available. *Id.* § 16.1-256.

18. A "learning center" is a secure dispositional incarceration facility operated to house juveniles committed to and operated by the Virginia Department of Corrections.

lawful authority.[19] If the juvenile has failed to appear in court after being served with a summons charging the child with being delinquent or a CHINS,[20] he may be detained. A child charged as a CHINS cannot be held beyond the next day the court sits in the jurisdiction and in no event for longer than seventy-two hours.[21]

A juvenile not meeting any of these criteria may be placed in shelter care,[22] rather than detention, awaiting trial. A juvenile cannot be held continuously in detention for more than twenty days awaiting a transfer hearing[23] or adjudicatory hearing,[24] and for no more than thirty days from such hearings to a dispositional hearing.[25] A juvenile not detained must have an adjudicatory or transfer hearing within 120 days from the date the petition is filed, but the statute allows all these limitations to be extended by the court for good cause shown.[26] The only sanction provided for violation of these time periods is release from detention.

Further procedural safeguards in the detention decisions are incorporated in the Code of Virginia by the requirements for finding probable cause,[27] the clear provision of a right to counsel at an earlier stage in the process,[28] and the establishment of a right to a detention review hearing within seventy-two hours if a juvenile is not released after a detention hearing and he or she was not represented by counsel at such hearing.[29]

Beyond the new law's impact on detention, it further substitutes

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19. This detention is pursuant to the Interstate Compact Relating to Juveniles found in VA. CODE ANN. § 16.1-323 to -330 (Repl. Vol. 1982). The relevant section of the compact is VA. CODE ANN. § 16.1-323 (Repl. Vol. 1982) (Article V).

20. A "CHINS" or "child in need of services" is a child who is habitually truant or disobedient of parental comands, who runs away, or commits an act which would not be a crime if committed by an adult. VA. CODE ANN. § 16.1-228 (Cum. Supp. 1985). These are the so-called "status offenses."

21. *Id.* § 16.1-248.1(A)(4). This instance and the CHINS who is a fugitive from another state are the only two remaining occasions wherein a status offender may be placed in secure detention.

22. *Id.* § 16.1-248.1(B). Shelter care is temporary placement in a nonsecure setting. *Id.* § 16.1-228.

23. A transfer hearing is a hearing in which the juvenile court's jurisdiction may be waived as to certain juveniles who have committed serious offenses. *See id.* § 16.1-269 (Repl. Vol. 1982).

24. An adjudicatory hearing is a hearing at which guilt or innocence is determined.

25. VA. CODE ANN. § 16.1-277.1 (Cum. Supp. 1985). The disposition hearing is the stage in the process in which the court decides what to do with the persons before the court.

26. *Id.*

27. *Id.* §§ 16.1-248.1, -250.

28. *Id.* § 16.1-266.

29. *Id.* § 16.1-250.1.

the use of the juvenile detention facility for the adult jail in disposition. As noted above, after June 30, 1986, no juvenile may be placed in an adult jail for dispositional purposes. The substitution of the detention home takes effect on July 1, 1985, but no such home can be used until the Department of Corrections has certified the facility for that purpose pursuant to State Board of Corrections standards.[30] Only a juvenile sixteen years of age or older convicted of committing an offense punishable by confinement if committed by an adult can be so confined under this act,[31] and the law defines two separate categories of juveniles who may be so confined. First, any age-eligible juvenile convicted of a committable offense may be confined in the detention home for up to thirty days from the date of the disposition order if the court finds: (1) after receipt of a social history,[32] that there has been no prior adjudication of guilt of a delinquent act within the previous twelve months; (2) that the interests of the child and community require that the juvenile be placed under legal restraint and discipline; and (3) that other placements will not serve the best interests of the juvenile.[33] In the second category, an age-eligible juvenile convicted of a committable offense may be placed in the detention home for up to six months pursuant to the suspension of an order of commitment to the Department of Corrections if the court finds: (1) after receipt of a social history, that the juvenile has been found guilty of delinquency within the previous twelve months and has failed to respond to past treatment efforts; (2) that the juvenile is amenable to continued treatment efforts in the community; and (3) that the interests of the community and child require that the child be placed under legal restraint and discipline based on the nature of the present offense, prior delinquency record, and past treatment efforts.[34] In entering an order in this second category, the court must specify conditions for the juvenile's participation in one or more community treatment programs during the incarceration period;[35] and a mandatory review hearing must be held at least once during each thirty days of confinement to monitor the placement, participation in community treatment programs, and

30. *Id.* § 16.1-284.1(D).
31. *Id.* § 16.1-284.1.
32. The social history is described in VA. CODE ANN. § 16.1-273 (Repl. Vol. 1982).
33. VA. CODE ANN. § 16.2-284.1(A) (Cum. Supp. 1985).
34. *Id.* § 16.1-284.1(B).
35. *Id.*

compliance by the child with conditions specified in the order.[36]

The statute also creates a new serious offender category for the juvenile sixteen years or older who has been found guilty of an act which would be a felony if committed by an adult and who is on parole or has been in a group home or other treatment facility within the previous twelve months pursuant to a court order in a delinquency case.[37] In such a situation, the court may commit the juvenile to the Department of Corrections for a determinate period of not less than six, nor more than twelve, months. The child cannot be released earlier unless a petition for earlier release is approved by the committing court based on good cause demonstrated by the Department.[38] The law further reinforces the court's power to punish for contempt but specifies that a juvenile's confinement for contempt may not be for more than ten days and must be in a secure facility for juveniles.[39] The statute clarifies that if a juvenile is convicted of a traffic violation for which an adult could be confined, he may only be confined in a facility in which juveniles may be confined.[40]

Other legislative enactments concerning delinquency give the juvenile court jurisdiction over a person who escapes from a juvenile detention home or similar treatment facility,[41] allow a police officer to arrest a juvenile for misdemeanor shoplifting not committed in his presence where probable cause is supplied by an eyewitness to the offense,[42] and permit the fingerprints of a child thirteen years of age or older who has been convicted of a delinquent act to be entered into the police department's computer by identification number or by any other method which insures confidentiality.[43]

The United States Supreme Court also provided some guidance this past year regarding searches involving juveniles in a public school setting in *New Jersey v. T.L.O.*[44] The Court concluded that the fourth amendment prohibition against unreasonable searches applies in a public school,[45] although school officials need not ob-

36. *Id.* § 16.1-284.1(C).
37. *Id.* § 16.1-285.1(A).
38. *Id.* § 16.1-285.1.
39. *Id.* § 16.1-292.
40. *Id.* § 16.1-279(E)(8).
41. *Id.* § 16.1-241(N).
42. *Id.* § 16.1-246(C)(1).
43. *Id.* § 16.1-299(C)(3).
44. 105 S. Ct. 733 (1985).
45. *Id.* at 740-41.

tain a warrant before searching a student.[46] A search by such an official[47] will "be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."[48] The Court went on to point out that "such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."[49] The holding should have little impact on Virginia since a 1978 Attorney General's opinion adopted much the same reasoning. That opinion, however, required the search to be based on grounds to believe that the student possessed "illegal drugs, contraband or weapons" and further confined such a search to one "conducted primarily for enforcing order and discipline in the school and not for criminal prosecution."[50]

The Virginia Supreme Court decided one case related to delinquency during the time period covered by this survey. In *Ballard v. Commonwealth*,[51] the court dealt with a juvenile who had been transferred to the circuit court for trial on a charge of capital murder and who was subsequently convicted by a jury of first degree murder. Section 16.1-272 of the Juvenile Code provides that a juvenile before the circuit court is entitled to a jury on the issue of guilt or innocence, but sentencing is to be by the judge who may sentence the minor either as an adult or pursuant to the dispositional alternatives available to a juvenile in the juvenile court. The trial judge in this case sentenced Ballard to life imprisonment in the penitentiary. The youth contended that he was denied equal protection since an adult in a similar situation would have been sentenced by the jury and would still have had the opportunity to "request a presentence report and ask the court to reduce the sentence or consider alternatives to incarceration."[52] The court concluded that age is not a suspect classification and that the right to jury sentencing is purely statutory and not a fundamental constitutional right. Therefore, the state need only establish a rational

46. *Id.* at 743.

47. The Court expressly limited its holding to "searches carried out by school authorities acting alone and on their own authority." *Id.* at 744 n.7.

48. *Id.* at 744.

49. *Id.*

50. 1977-78 Op. Va. Att'y Gen. 375.

51. 228 Va. 213, 321 S.E.2d 284 (1984).

52. *Id.* at 216, 321 S.E.2d at 285.

basis for treating juveniles before the circuit court in a different manner than adults. Here, the statutory scheme afforded a minor the additional right to be considered for treatment as a juvenile which constituted a rational basis for differential treatment.

II. Abused, Neglected, and Missing Children

Concerns about abused and neglected children have been preeminent in the past ten years in Virginia since the enactment of the last major revision of the laws designed to protect such children in 1975. However, only in the last few years have concerns about sexually abused and exploited children come to the forefront. Three Virginia Supreme Court cases have addressed this tragic problem during the period covered by this survey. In *Campbell v. Commonwealth*,[53] the defendant was convicted of indecent exposure with lascivious intent pursuant to section 18.2-370.1 of the Virginia Code for beckoning to a young girl and a boy near their homes and then pulling down his pants to his knees without any underpants. The court found this evidence sufficient to support the conviction and reiterated that proof of any one of four separate factors will be adequate to uphold a conviction under this Code section: (1) the defendant was sexually aroused; (2) he made any gesture toward himself or the victim; (3) he made any improper remarks to the child; or (4) he asked her to do anything wrong.[54]

Fisher v. Commonwealth[55] presented a more dramatic situation in which the defendant was convicted of sodomy and attempted rape of a ten-year-old girl based solely on her testimony and the further evidence of her prompt report of the acts to other members of her family. The court reaffirmed that the testimony of a victim in such a case need not be corroborated, but went on to point out that here corroboration existed by the child's complaint to her twelve-year-old brother at the first opportunity to speak to another person outside Fisher's presence and by her additional complaint to her grandmother that evening. Her concessions on cross-examination that she had previously "told stories" about the defendant to get him in trouble did not make her evidence inherently incredible.

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53. 227 Va. 196, 313 S.E.2d 402 (1984).

54. *Id.* at 199-200, 313 S.E.2d at 404 (citing and distinguishing McKeon v. Commonwealth, 211 Va. 24, 175 S.E.2d 282 (1970)).

55. 228 Va. 296, 321 S.E.2d 202 (1984).

The final case, *Sutton v. Commonwealth*,[56] presented a bizarre factual situation in which a man was found guilty of raping his wife's fifteen-year-old niece, and his wife was found guilty of rape as a principal in the second degree. The girl had previously lived with her mother in North Carolina where she was raped by her mother's male friend when she was ten. At the age of twelve, she went to live with her father in another town in North Carolina and was repeatedly physically abused by him. She then visited the Suttons in Virginia in December 1981. The husband attempted to molest her, and his wife urged her to submit to overcome her fear of men. She returned to her father, but in July 1982, after further beatings, went to live with the Suttons. She ultimately submitted to the husband's persistent demands that she have intercourse with him out of physical fear, having observed his violent behavior on other occasions, and out of concern that he would return her to her abusive father as he threatened to do. The wife encouraged her submission and on two occasions was in bed with the husband and her niece while they had intercourse. The court found that the husband's actions amounted to intimidation through psychological pressure which generated fear in the young girl, whether tested by an objective or subjective standard.[57] The aunt's actions were in furtherance of the "common enterprise," and she was found guilty as a principal.[58]

The 1985 legislative session further refined Virginia's laws dealing with abused and neglected children by mandating that the juvenile court give preferential consideration to placing a child with suitable relatives, including grandparents, when entering an emergency removal order,[59] preliminary removal order,[60] or terminating parental rights;[61] and by allowing a preliminary protective order to be directed to another adult occupant of a dwelling where a child is found at risk.[62] In abuse or neglect cases, the court's dispositional alternatives include permitting the child to remain with an adult occupant of the same home, even though unrelated, and prohibiting contact between the abuser and the child for up to 180

56. 228 Va. 654, 324 S.E.2d 665 (1985).
57. *Id.* at 664-65, 324 S.E.2d at 670-71.
58. *Id.* at 666-67, 324 S.E.2d at 672.
59. VA. CODE ANN. § 16.1-251(C) (Cum. Supp. 1985).
60. *Id.* § 16.1-252(F)(1).
61. *Id.* § 16.1-283(A).
62. *Id.* § 16.1-253(A).

days pending a further hearing.[63] The General Assembly clarified that a foster care plan is to be filed by the local department of social services within sixty days of the transfer of custody to the department, rather than from the time of the order of disposition.[64] The court is authorized to grant visitation to parents and grandparents of a child in foster care where there has been an ongoing relationship and it is in the child's best interests.[65]

The recent publicity surrounding the problem of missing children stimulated the enactment of the federal "Missing Children's Assistance Act,"[66] as part of the Comprehensive Crime Control Act of 1984, which introduces a federal effort and emphasis in this area.

The passage of a package of Virginia bills addresses the problem in a more specific way. House Bill 1287 established a Missing Children Information Clearinghouse within the Department of State Police as a central repository of information regarding missing children.[67] The bill prohibits the establishment or maintenance of a policy in any local law enforcement department requiring the observance of a waiting period in cases involving missing children.[68] Senate Bill 618 requires a criminal history records check of job applicants and volunteers at licensed child-welfare agencies in order to ascertain if such persons have been convicted of any offense involving abuse or neglect of a minor, criminal sexual assault, contributing to the delinquency of a minor or any crime against the person.[69] The bill authorizes access by the Commissioner of the Department of Social Services to such information in his investigation of child-care licensure applicants.[70] Senate Bill 593 requires a local superintendent of schools to notify law enforcement officials if he suspects that a pupil entering the public schools without a birth certificate is a missing child,[71] while imposing the same requirement in connection with a transferred child without a cumu-

63. *Id.* § 16.1-279(A).
64. *Id.* § 16.1-281(A).
65. *Id.* § 63.1-204.1.
66. PUB. L. No. 98-473, 42 U.S.C.A. §§ 5771-77 (Supp. 1985). The legislation primarily provides for the establishment of a toll-free national telephone hotline, the creation of a grant program, and the development of technical resources at the federal level.
67. VA. CODE ANN. §§ 52-31 to -34 (Cum. Supp. 1985).
68. *Id.* § 15.1-131.9.
69. *Id.* § 63.1-198 to -198.1.
70. *Id.* § 19.2-389(A)(12).
71. *Id.* § 22.1-4 (Repl. Vol. 1985).

lative record from another division.[72] Senate Bill 596 requires school personnel to make a reasonable effort to notify the parent or guardian of a child who fails to report to school without any indication that the child was expected to be absent.[73] A final bill authorizes a custodial parent or guardian to visit his or her child in a child-care facility providing day care for the child without prior notice.[74]

III. PATERNITY

The General Assembly amended the paternity statutes this year to expand the methods whereby paternity may be established. Senate Bill 77 changes method one from proof that the putative father cohabited openly with the mother during all of the ten months preceding the birth of the child to proof that the man "cohabitated openly with the mother at the probable time of the conception of the child."[75] Another provision of Senate Bill 77 would have allowed establishing paternity through proof that the putative father and the mother applied for a marriage license after the child's conception; however, this provision was defeated. Also defeated was a section that would have allowed the court to order either or both parties to a paternity suit to make advance payment for a blood grouping test where the moving party is unable to pay and would have authorized the court to order the losing party to pay or reimburse the party who paid the cost of the tests. Under the new section as enacted, the written results of the blood tests may be admitted if sworn to under oath and if filed with the court clerk at least fifteen days prior to the hearing or trial. Upon motion of any party in interest, the analyst may be required to appear as a witness and be subject to cross-examination, if the motion is made within seven days prior to the hearing or trial.[76]

Three recent Virginia Supreme Court decisions examine proof of paternity in cases that arose prior to the amendment of the relevant statutes. In *Jones v. Robinson*,[77] the court considered three cases which arose prior to the 1982 amendment allowing the use of the HLA (human leukocyte antigen) test in cases involving a child

72. *Id.* § 22.1-289.
73. *Id.* § 22.1-258.
74. *Id.* § 63.1-210.1 (Cum. Supp. 1985).
75. *Id.* § 20-61.1.
76. *Id.* § 20-61.2.
77. 229 Va. 276, 329 S.E.2d 794 (1985).

born out of wedlock under section 20-61.1 of the Virginia Code. At the time of trial, the Code permitted more methods of proof in a divorce or support proceeding than in cases of a child born out of the bonds of marriage attempting to establish paternity. The court concluded that the statute was unconstitutional under the equal protection clause of the fourteenth amendment in that it discriminated against illegitimate children by denying them a reasonable opportunity to prove paternity.[78] In *Hankerson v. Moody*,[79] the court reiterated the *Jones* holding of unconstitutionality of the paternity statutes prior to the 1982 amendments and ruled that results of blood grouping tests were admissible in civil nonsupport proceedings subject only to proof by a preponderance of the evidence.[80]

Finally, in *Buckland v. Commonwealth*,[81] the court ruled that the results of HLA tests were admissible evidence in light of the fact that there was no break in the chain of custody, that the proper testing procedures were followed, and that a qualified expert reported the results.[82] In addition to blood test results, the trial court properly permitted evidence that the putative father had access to the mother during the probable period of conception.[83]

IV. Child Support

The United States Congress initiated a new emphasis on child support enforcement throughout the country with the enactment of the Child Support Enforcement Amendments of 1984[84] to Title IV-D of the Social Security Act.[85] At the core of the amended Act is a set of mandated procedures which the states must implement in order to improve support collection.[86]

The 1985 General Assembly enacted several bills to improve Virginia's enforcement procedures in compliance with the Act and its

78. *Id.* at 286-87, 329 S.E.2d at 801-02.
79. 229 Va. 270, 329 S.E.2d 791 (1985).
80. *Id.* at 274-75, 329 S.E.2d at 793-94.
81. 229 Va. 290, 329 S.E.2d 803 (1985).
82. *Id.* at 296, 329 S.E.2d at 806-07.
83. *Id.* at 296-97, 329 S.E.2d at 807.
84. Pub. L. No. 98-378, 98 Stat. 1305 (codified in scattered sections of 42 U.S.C.).
85. 42 U.S.C.A. §§ 651-59 (1983 & Supp. 1985).
86. Dodson & Horowitz, *Child Support Enforcement Amendments of 1984: New Tools for Enforcement*, 10 Fam. L. Rep. (BNA) 3051 (Oct. 23, 1984).

regulations. Senate Bill 727 is the cornerstone of these enactments with provisions allowing the Department of Social Services to file support petitions on its own motion in the juvenile court.[87] This bill also adds a new Chapter 4.1 to Title 20, effective October 1, 1985, governing child or spousal support cases providing for the admissibility of Department support payment records, establishing a format for support orders, providing for the payment of future support obligations to the Department,[88] and broadening the use of garnishment for current support and arrearages, as well as those based on past delinquencies. The bill allocates garnishment orders priority over other liens and imposes penalties on employers who discriminate against employees subject to garnishment orders or who fail to withhold the appropriate amounts.[89] The legislation also places responsibility for processing support payments in the Department[90] and establishes a structure within the Department for the issuance of administrative support orders and for the provision of services to those seeking to enforce support obligations.[91] This Virginia bill is in conformity with the federal legislative and administrative initiatives.

Related bills provide that failure to comply with a juvenile court support order can result in a sentence of confinement of up to one year,[92] that a juvenile court retains jurisdiction to enforce its orders even when the jurisdiction to enter further orders is divested by the filing of a proceeding in the circuit court,[93] and establish new venue rules in child custody and child and spousal support cases in juvenile court.[94] In addition, a monetary award to a spouse for future installments under the equitable distribution statute shall upon court order be a lien upon the spouse's realty.[95]

V. Education of Disadvantaged and Handicapped Children

This past year has been an especially active one for the United States Supreme Court in dealing with the educational rights of disadvantaged and handicapped children. In *Bennett v. Kentucky*

87. Va. Code Ann. § 16.1-260 (Cum. Supp. 1985).
88. *Id.* §§ 20-60.1 to -60.5.
89. *Id.* §§ 63.1-256 to -258.
90. *Id.* § 20-88.29:1.
91. *Id.* § 63.1-250.2.
92. *Id.* §§ 16.1-279 to -292.
93. *Id.* § 16.1-244.
94. *Id.* § 16.1-243.
95. *Id.* § 8.01-460.

Department of Education,[96] the Court agreed with the Secretary of Education that the State of Kentucky had improperly used Title I[97] funds to supplant, rather than supplement, state and local expenditures for compensatory education programs for disadvantaged children. The state's substantial compliance and lack of bad faith would not absolve it from liability for recovery of the misused funds. The contemporaneous decision of *Bennett v. New Jersey*[98] determined that substantive provisions of the 1978 amendments to Title I did not apply retroactively in determining if funds under that program were misused in earlier years, and New Jersey was thus liable for its misapplication of such funds.

The Court also decided three cases under Public Law 94-142, the Education of the Handicapped Act of 1974.[99] In *Smith v. Robinson*,[100] the Court concluded that the Act was the exclusive avenue for the vindication of special education rights and that prevailing parents as parties could not pursue claims under 42 U.S.C. § 1983 or under section 504 of the Rehabilitation Act[101] in order to secure an award of attorney's fees under the Civil Rights Attorney's Fees Act [102] or under the Rehabilitation Act.[103] *Irving Independent School District v. Tatro*,[104] reiterated the holding of *Smith* as to attorney's fees but also concluded that catheterization services for a spina bifida child constituted "related services" under the Education of the Handicapped Act.[105] Finally, in *Burlington School Committee v. Department of Education*,[106] the Supreme Court concluded that parents who unilaterally change a handicapped child's placement from a public school to a state-approved private school for special education do not waive their right to secure reimbursement of the costs of the private placement after such

96. 105 S. Ct. 1544 (1985).

97. 20 U.S.C. §§ 2701-2854 (1982 & Supp. 1983).

98. 105 S. Ct. 1555 (1985).

99. 20 U.S.C. §§ 1400-61 (1982 & Supp. 1983).

100. 104 S. Ct. 3457 (1984).

101. 29 U.S.C. § 794 (1982).

102. 42 U.S.C. § 1988 (1982).

103. The parents relied on 31 U.S.C. § 1244(e), now replaced by 31 U.S.C. § 6721(c)(2) (1982). The Rehabilitation Act now makes attorney's fees available under 29 U.S.C. § 794a (1982).

104. 104 S. Ct. 3371 (1984).

105. 20 U.S.C. § 1401(17) (1982).

106. 105 S. Ct. 1996 (1985).

change is determined to be appropriate through due process proceedings.[107]

The United States Court of Appeals for the Fourth Circuit decided two cases arising in Virginia during the time period addressed by this survey. In *Matthews v. Davis*,[108] the court affirmed a judgment of the district court releasing a local school division from its prior obligation to provide twenty-four-hour residential care and education for a profoundly retarded child. The more recent case of *School Board v. Malone*[109] concluded that the expulsion of a handicapped child from school for disciplinary reasons is reviewable under the Education for the Handicapped Act. The Fourth Circuit held that where the proscribed behavior is caused by the handicapping condition, any effort by the schools to expel the child is a change in placement which must be dealt with through the Act's procedures rather than through the normal expulsion process.[110]

107. *Id.* at 2004.

108. 742 F.2d 825 (4th Cir. 1984).

109. 762 F.2d 1210 (4th Cir. 1985).

110. The holding in the case is consistent with a prior opinion of the Attorney General of Virginia. 1980-82 Op. Va. Att'y Gen. 298.