

## Chapter 3 – Juvenile Delinquency Procedures

### Case Procedures

The preceding narrative description and flowchart of the juvenile delinquency case process are overviews of the basic steps required to process a juvenile case. The following detailed procedures describe the existing procedures to be used by the juvenile and domestic relations district court for processing these cases. Each procedure section contains a brief discussion of the process involved and then presents the detailed procedures.

**NOTE:** A delinquent act is an act designated as a crime under the law of this Commonwealth, or an ordinance of any city, county, town or service district, or under federal law, or a violation of [Va. Code § 18.2-308.7](#) or a violation of a court order as provided for in [Va. Code § 16.1-292](#), except for otherwise lawful acts which are designated a crime only if committed by a child. [Va. Code § 16.1-228](#). However, any child who is tried and convicted in a circuit court as an adult under the provisions of [Va. Code §§ 16.1-269.1, et seq.](#) and [16.1-272](#) will be considered an adult in any criminal proceeding resulting from a subsequent offense.

### Filing of a Petition or Issuance of a Warrant

A juvenile delinquency case involving a violation of criminal laws by a minor may be initiated by an arresting officer observing a violation or by a citizen complaint following an offense.

The Chief Judge may make arrangements for a replacement intake officer from another court service unit to be available when the court is closed. [Va. Code § 16.1-235.1](#). This replacement intake officer may have the juvenile appear via two-way electronic video and audio communication. [Va. Code § 16.1-255](#).

If an intake officer or judge cannot be contacted after the child arrives at the magistrate's office or is not readily available, then the complaint may be filed with the magistrate. The procedures to be followed by an intake officer upon receipt of a complaint that are discussed in the following narrative can be found in [Va. Code § 16.1-260](#).

An intake officer has the authority to issue a detention order/capias for an adult under age 21 when the adult is alleged to have committed an offense as a minor. These proceedings shall be initiated by a DC-511, PETITION. The capias is intended to work in a similar way as a detention order for a juvenile. Intake will generate the DC-529, DETENTION ORDER/CAPIAS pursuant to [§ 16.1-247\(K\)](#). The DC-529, DETENTION ORDER/CAPIAS pursuant to [§ 16.1-247\(K\)](#) is not indexed. Parents of the person charged are not summoned. Upon receipt of a complaint, the court services unit will:

Review the complaint.

Determine if probable cause exists.

If probable cause exists, then determine whether the complaint may be diverted to out-of-court adjustment; if not, then a juvenile district court form DC-511, PETITION, is prepared for signing by the petitioner (person making the complaint).

Determine if detention is required; if so, the intake officer will prepare and sign a district court form DC-529, DETENTION ORDER/CAPIAS pursuant to § 16.1-247(K).

If the intake officer refuses to issue a petition relating to an offense that, if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing of his right to apply to a magistrate for a warrant. A magistrate may issue a warrant in such cases if he determines that probable cause exists. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

**NOTE:** Attorneys may file a petition directly with the clerk, except for CHINS and delinquency petitions. [§16.1-260\(A\)\(iv\)](#) The Commonwealth's Attorney may file a petition directly with the clerk, including CHINS and delinquency petitions. [§16.1-260\(A\)\(i\)](#).

The magistrate may issue a warrant for a juvenile after a finding of probable cause when the intake officer or judge is not reasonably available or upon the intake officer's refusal to issue a petition. [Va. Code § 16.1-256](#). If probable cause is found, the magistrate will prepare and issue a district court form DC-312, WARRANT OF ARREST – FELONY, district court form DC-314, WARRANT OF ARREST – MISDEMEANOR (STATE), or district court form DC-315, WARRANT OF ARREST – MISDEMEANOR (LOCAL) which shall be delivered forthwith to the juvenile and domestic relations district court. The warrant shall be returned to the clerk's office for re-delivery to the court services unit (intake) for conversion to a petition, with the warrant attached to the original petition being returned to court.

The signature of the complainant on the petition is not required; however, the clerk should attach a copy of the warrant to each copy of the petition or the summons for service on the juvenile and parent(s) or guardian(s).

After the filing of a petition alleging that a juvenile has committed one or more of the following offenses, the intake officer shall notify the superintendent of the school division in which it is alleged that the juvenile should be enrolled, by telephone and by mail, of the filing of the petition.

- A firearm offense pursuant to Articles 4 ([§§ 18.2-279](#) et seq.), 5 ([§§ 18.2-288](#) et seq.), 6 ([§§ 18.2-299](#) et seq.), or 6.1 ([18.2-307.1](#) et seq.), or 7 ([§ 18.2-308.1](#) et seq.) of Chapter 7 of Title 18.2;
- Homicide, pursuant to Article 1 ([§§ 18.2-30](#) et seq.) of Chapter 4 of Title 18.2;
- Felonious assault and bodily wounding, pursuant to Article 4 ([§§ 18.2-51](#) et seq.) of Chapter 4 of Title 18.2;

- Criminal sexual assault, pursuant to Article 7 ([§§ 18.2-61](#) et seq.) of Chapter 4 of Title 18.2;
- Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances pursuant to Article 1 (§§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
- Manufacture, sale, or distribution of marijuana pursuant to Article 1 ([§§ 18.2-247](#) et seq.) of Chapter 7 of Title 18.2;
- Arson and related crimes, pursuant to Article 1 ([§§ 18.2-77](#) et seq.) of Chapter 5 of Title 18.2;
- Burglary and related offenses, pursuant to [§§ 18.2-89](#) through -93; or Robbery pursuant to [§ 18.2-58](#).
- Prohibited criminal street gang activity pursuant to [§ 18.2-46.2](#).
- Recruitment of juveniles for criminal street gang activity pursuant to [§ 18.2-46.3](#). An act of violence by a mob pursuant to [§ 18.2-42.1](#)
- Abduction of any person pursuant to [§§ 18.2-47](#) or [18.2-48](#)
- [A threat pursuant to § 18.2-60](#).

The filing of a petition is not necessary if the juvenile is released on a VIRGINIA UNIFORM SUMMONS by the arresting officer for violation of:

- Possession of marijuana, if released to custody of a parent/guardian.
- Underage drinking and driving, if released to custody of a parent/guardian.
- Traffic laws (including Child Restraint Devices Act violations, bicycle offenses, hitchhiking and other pedestrian offenses).
- Driving or sailing while intoxicated or other alcohol-related offenses, (including refusal to take a blood or breath test,) if released to custody of a parent/guardian.
- Game and fish laws.
- Surfing ordinances.
- Curfew ordinances.
- Animal control violations
- Littering violations
- Offenses, which, if committed by an adult would be punishable as a Class 3 or Class 4 misdemeanor.

For specific procedures for the handling of traffic cases, including prepayment of traffic infractions, see the chapter on “Juvenile Traffic and Traffic Misdemeanor Procedures” in this manual. When found guilty of a traffic infraction (not a traffic-related offense which would be a misdemeanor or felony if committed by an adult), a juvenile is subject to only those judicial sanctions applicable to an adult who has committed a traffic infraction. [Va. Code § 16.1-278.10](#). However, the [Department of Motor Vehicles](#) may require attendance at a driver improvement clinic for certain infractions.

## Processing of a Child Taken into Immediate Custody

A child may be taken into immediate custody pursuant to [Va. Code § 16.1-246](#) in the following situations:

- With a district court form DC-529, DETENTION ORDER/CAPIAS pursuant to [§ 16.1-247\(K\)](#), or district court form DC-530, Shelter Care Order issued by the judge, the intake officer or, when authorized by the judge, the clerk of the juvenile and domestic relations district court in accordance with provisions of law, or
- With a district court form DC-312, WARRANT OF ARREST – FELONY, district court form DC-314, WARRANT OF ARREST – MISDEMEANOR (STATE), or district court form DC-315, WARRANT OF ARREST – MISDEMEANOR (LOCAL), and a district court form DC-529, DETENTION ORDER/CAPIAS pursuant to [§ 16.1-247\(K\)](#) issued by a magistrate; or
- When a child is alleged to be in need of services or supervision, and (1) there is a clear and substantial danger to the child's life or health, or (2) the assumption of custody is necessary to ensure the child's appearance before the court; or
- When, in the presence of the officer who makes the arrest, a child has committed an act designated a crime under the law of this State, or an ordinance of any city, county, town or service district, or under federal law and the officer believes that such is necessary for the protection of the public interest; or
- When a child has committed a misdemeanor offense involving shoplifting in violation of [Va. Code § 18.2-103](#), assault and battery, or carrying a weapon on school property in violation of [Va. Code § 18.2-308.1](#) and, although the offense was not committed in the presence of the officer who makes the arrest, the arrest is based on reasonable complaint of a person who observed the alleged offense; or
- When the officer believes that there is probable cause to believe that a child has committed an offense which if committed by an adult would be a felony; or
- When a law-enforcement officer has probable cause to believe that a person committed to the [Department of Juvenile Justice](#) as a child has run away or that a juvenile has escaped from a jail or detention home; or
- When a law-enforcement officer has probable cause to believe a child has run away from a residential, child-caring facility or home in which he had been placed by the court, the local department of social services or a licensed child welfare agency; or
- When a law-enforcement officer has probable cause to believe that a child (1) has run away from home, or (2) is without adult supervision at such hours of the night and under such circumstances that the law-enforcement officer reasonably concludes that there is a clear and substantial danger to the child's welfare.
- When a child is believed to be in need of inpatient treatment for mental illness as provided in [§ 16.1-340](#).

A person taking a child into custody in the above situations shall, with all practicable speed and depending on the situation, bring the child to the judge or intake officer and the judge, intake officer, or arresting officer shall, in an expeditious manner, give notice of the action taken and a statement of reasons why the child was taken into custody to the parent, guardian, legal custodian or other person standing *in loco parentis*. [Va. Code § 16.1-247](#). The required notice may be given orally or in writing.

A child taken into custody who is brought before a judge, intake officer or magistrate, must be released on specific conditions to his or her parent, guardian, legal custodian or other suitable person able and willing to provide supervision and care for such child unless the child meets the criteria of [Va. Code § 16.1-248.1](#) for secure detention or shelter care and is so placed. If an intake office or magistrate releases a juvenile, either on bail or recognizance or under conditions, no motion to revoke bail or change the conditions may be made unless the juvenile has violated a term or condition of his release, is convicted of or taken into custody for an additional offense, or the Commonwealth's attorney presents evidence that incorrect or incomplete information was relied upon by the intake officer or magistrate.

For detention in a secure facility, there must be probable cause to believe that the child committed the alleged act *and*:

- the juvenile is at least 11 years of age
- the alleged act would be a felony or Class 1 misdemeanor if committed by an adult or the juvenile violated the terms of his probation or parole and the underlying charge which resulted in the probation or parole would be a felony or Class 1 misdemeanor if committed by an adult; and there is clear and convincing evidence that:
  - the child's liberty constitutes an unreasonable danger to the person or property of others considering the seriousness of the current offense(s), other pending charges and prior adjudicated offenses, the legal status of the child and any aggravating and mitigating circumstances; or
  - the child's liberty would present a clear and substantial threat of serious harm to the child's life or health; or
  - the child has threatened to abscond from the court's jurisdiction during this case or has a record of willful failure to appear in court during the last 12 months; or
- the child absconded from a detention home or other facility; or
- the child is a fugitive from a jurisdiction outside Virginia and subject to a verified petition or warrant (to be held pending arrangement for the child's return); or
- the child failed to appear in court after service of a summons when it is alleged the child has committed a delinquent act or that the child either is in need of services or is in need of supervision. If either of the latter is the case, the child may be held for good cause shown until the next date that the court sits or seventy-two hours,

whichever occurs first. If the seventy-two hour period ends on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the time period is extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

When a juvenile is detained in a secure facility, the juvenile's probation officer may review such placement for the purpose of seeking a less restrictive alternative to confinement in that secure facility.

*A juvenile younger than 11 years of age who is alleged to have committed one or more of the delinquent acts enumerated in subsection B or C of § [16.1-269.1](#) and who is ordered to remain in detention or shelter care pursuant to § [16.1-248.1](#) pending a court hearing may only be detained in a place described in subdivision 1, 2, or 4 of § [16.1-249](#), but under no circumstances shall such juvenile be detained pursuant to this section in a secure detention facility.*

For shelter care placement, one of the following must be present:

- The child is eligible for placement in a secure facility; *or*
- The child failed to obey directions of the court, intake officer or magistrate while on conditional release; *or*
- The child's parent, guardian or other person able to provide supervision cannot be reached nor arrive to assume custody within a reasonable time; *or*
- The child does not consent to return home, *or*
- The child's parent or guardian refuses to permit the child to return home and no relative or other person willing and able to provide proper supervision and care can be reached within a reasonable time.

The places of confinement of juveniles are subject to the restrictions of the Code of Virginia and approval by the [Department of Juvenile Justice](#) in a certain instance. If it is ordered that a juvenile remain in detention or shelter care, such juvenile may be detained, pending a court hearing, in the following places:

- An approved foster home or a home otherwise authorized by law to provide such care;
- A facility operated by a licensed child welfare agency;
- If a juvenile is alleged to be delinquent, in a detention home or group home approved by the [Department of Juvenile Justice](#);
- To the extent permitted by federal law, a separate juvenile detention facility located upon the site of an adult regional jail facility constructed after 1994 and approved by the [Department of Juvenile Justice](#) and certified by the Board of Juvenile Justice for the holding and detention of juveniles.
- Any other suitable place designated by the court and approved by the [Department of Juvenile Justice](#).

Any juvenile who has been ordered detained in a secure detention facility may be held incident to a court hearing (i) in a court holding cell for a period not to exceed six hours provided the juvenile is entirely separate and removed from detained adults or (ii) in a non-secure area under constant supervision.

No juvenile age fourteen or older may be detained in jail except when:

- The case has been transferred to circuit court or certified to the grand jury; or
- The juvenile has been determined by *the judge* to be a threat to the security or safety of the other detainees, or the staff of the detention facility provided that the juvenile is detained in a room or ward entirely separate and removed from adults, adequate supervision is provided and the facility is approved for detention of juveniles by the [State Board of Corrections](#), or
- It has been demonstrated, in the judgment of *the custodian*, that the presence of the juvenile creates a threat to the security or safety of other detainees or the staff of the facility, provided that it is for no longer than six hours prior to a court hearing and six hours after the court hearing, unless a longer period is ordered by a judge under the circumstances in the paragraph immediately preceding and the juvenile is detained in a room or ward entirely separate and removed from adults, adequate supervision is provided and the facility is approved for detention of juveniles by the [State Board of Corrections](#), or
- The juvenile is charged with a felony or class 1 misdemeanor and the judge or intake office determines that secure detention is needed for the safety of the juvenile or the community, provided that the juvenile is detained for no longer than six hours prior to a court hearing and six hours after the court hearing pending transfer to a juvenile facility and the juvenile is detained in a room or ward entirely separate and removed from adults, constant supervision is provided and the facility is approved for detention of juveniles by the [State Board of Corrections](#). [Va. Code § 16.1-249\(F\)](#). The [State Board of Corrections](#) is authorized and directed to prescribe minimum standards for temporary lock-up rooms, wards and court holding cells based on the requirements set out in this subsection.

The [Department of Corrections](#), [Department of Juvenile Justice](#) and [Department of Criminal Justice Services](#) shall assist the localities or combinations thereof in implementing this section and ensuring compliance.

### **Clerk's Office Processing of the Petition or Warrant**

Upon receipt of the case papers from the magistrate or the court services unit, the clerk's office must perform several functions prior to the court date to prepare the case for court. The clerk's office will complete these case indexing and filing functions:



- Assign a case number to the case. The case number is the juvenile's base file number (for the file containing all of his case records) plus a suffix for each petition. Retrieve the next available pre-numbered file folder, if no case file folder for the juvenile exists.
- Enter the case into the automated system.
- Enter the case number on the district court form DC-511, PETITION.
- Scan and assign all case documents in the court's records management system.
- Complete and issue a copy of the district court form DC-510, SUMMONS together with a copy of the juvenile district court form DC-511, PETITION to the child, and to at least one parent, guardian, legal custodian or other person standing *in loco parentis*, (and to any other persons as may appear to the court to be proper and necessary parties) and forward for service. If a custodian is summoned who is not a parent, a parent shall also be served with a summons. See the discussion above of case initiation procedures, regarding cases in which a detention order was issued. The case number should be added to all forms.
- Attach case papers to the case.

A summons is not required if the judge certifies on the record that the identity of a parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of that fact, if no other evidence is available to the court that refutes the affidavit. See district court form DC-509, AFFIDAVIT/CERTIFICATION OF PARENTAL IDENTITY OR LOCATION.

The SUMMONS may be served by the following methods:

- Personal service or substituted service (as prescribed in [Va. Code § 8.01-296 \(2\)](#)) if the recipient can be found in the state.
- Certified mail return receipt requested or personal service if the recipient is out of state and the address is known or can be ascertained with reasonable diligence.
- Publication if the recipient cannot be found or his post office address cannot be ascertained.

Service of process may be waived by a party (other than a child) by stipulation or voluntary appearance at hearing. Personal service may be obtained by:

- Sheriff
- Deputy sheriff



- Police officer
- Other suitable persons designated by the court (with proof of service by affidavit or otherwise under oath).

## Pre-Trial Procedures

Prior to the court date, the clerk's office will prepare the docket as follows:

- Retrieve all cases from the files for a given court date.
- Print the online docket prior to trial from JCMS.

If ordered by the judge, the court services unit will prepare an intake report to be filed with the case prior to court.

## Right to Representation by A Lawyer (Counsel)

Children who are alleged to be delinquent, in need of supervision or in need of services are entitled by [Va. Code § 16.1-266](#) to be represented by a lawyer. The following are the statutory procedures concerning the right of representation by a lawyer:

- Prior to the detention review hearing held pursuant to [Va. Code § 16.1-250](#), the court shall appoint an attorney to represent the child, unless an attorney has been retained and appears on behalf of the child.
- Subsequent to the detention hearing, if any, and prior to the adjudicatory or transfer hearing, the child and his parents, guardian, legal custodian or other person standing *in loco parentis* are informed by a judge, clerk or probation officer of the child's right to counsel and the liability of the parent, guardian, legal custodian or other person standing *in loco parentis* for the costs of legal services.

At the same time, they are given the opportunity to:

- Obtain private counsel of their own choice; or
- Permit the child to waive his right of representation by a lawyer by signing the waiver portion of district court form DC-515, WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER (JUVENILE) if the court finds after conducting the examination of the child and the parent(s), guardian, legal custodian or other person standing *in loco parentis* as required by the waiver form that:
  - the waiver and consent to the waiver are made knowingly and intelligently,
  - the interests of the parent(s), guardian, legal custodian or other person standing *in loco parentis* are not adverse to the child, and
  - the waiver and consent to waiver are appropriately signed

- If the juvenile is alleged to have committed a delinquent act that would be a felony if committed by an adult, the court is required to have the juvenile consult with an attorney before waiving the right to counsel; or,
- If the court determines that the child is indigent within the meaning of the law pursuant to the guidelines set forth in [Va. Code § 19.2-159](#) after reviewing the district court form DC-333, [FINANCIAL STATEMENT - ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES](#) of the child, and the parent, guardian, legal custodian or other person standing *in loco parentis* does not retain a lawyer to represent the child, the statement of indigency portion of district court form DC-513, ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL shall be signed by the child and the court shall appoint a lawyer to represent the child. After July 1, 2005, an attorney appointed to represent a defendant must be from the appropriate list of qualified attorneys maintained by the [Virginia Indigent Defense Commission](#). If no attorney who is on the list maintained by the Indigent Defense Commission is reasonably available, the court may appoint as counsel an attorney not on the list who has otherwise demonstrated to the court's satisfaction an appropriate level of training and experience. The court shall provide notice to the Commission of such appointment by sending a copy of the district court form DC-513, ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL. There is no statutory requirement as to the frequency of mailing such notices, therefore: it is recommended to send in copies at least once a month. Copies may be mailed to:

Virginia Indigent Defense Commission  
Administration Office  
1604 Santa Rosa Road, Suite 109  
Richmond, VA 23229  
Attn: ATTORNEY CERTIFICATION SECTION

- The defendant should be instructed to promptly contact his court-appointed attorney. A copy of the district court form DC-513, Advisement and Request for Appointment of Counsel with the order of appointment portion completed should be transmitted to the court-appointed counsel together with the forms that counsel will need to prepare (time sheet, etc.). Public defenders may be appointed only for cases in the courts of the jurisdictions set out in [Va. Code § 19.2-163.04](#). If the parents of the child also claim to be indigent, they must complete a separate district court form DC-333, [FINANCIAL STATEMENT - ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES](#) and execute the parent's portion of district court form DC-513, ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL.

The person conducting this proceeding should also advise parents, guardians, legal custodians or persons standing *in loco parentis* of their liability for the costs of the lawyer appointed to represent the child if the court appoints a lawyer to represent the child and

the parents are later found to be financially able to pay for a lawyer. [Va. Code § 16.1-267](#). Their liability would be up to the limits set forth in [Va. Code § 19.2-163 \(1\)](#). The lawyer representing the child would be compensated by the court within the limits set forth in [Va. Code § 19.2-163 \(1\)](#).

An attorney is not required to be appointed to represent an otherwise eligible child in traffic infraction cases because “delinquent act” does not include a traffic infraction.

In every case involving a child charged with being a delinquent or a child in need of services (CHINS), a copy of either the district court form DC-513, ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL, or the district court form DC-515, WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER must be given to the child. By doing so, the child receives a written notice of the records expungement provisions required by [Va. Code § 16.1-306](#).

A number of juvenile courts apprise the child of his right to representation by a lawyer as soon as possible after detention or service of the summons in order to avoid last-minute trial delays and inconvenience to witnesses and other trial participants by requests for continuance to obtain a lawyer or to confer with a newly-appointed lawyer. In some localities, extensive use of specially trained probation officers is made for advising parties of their right to representation by a lawyer and helping them prepare the district court form DC-333, [FINANCIAL STATEMENT - ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES](#). This practice not only relieves judges and clerks of this duty, but also permits the proceeding to be scheduled at night so as to minimize inconvenience to the child and his parents.

## Detention Hearing

### [Va. Code § 16.1-250](#)

When a child is held in custody and not released, the child must be brought before a judge on the next day on which the court sits within the county or city wherein the charge against the child is pending. If the court does not sit on the day after the child is taken into custody, the child shall be brought before a judge within a reasonable time not to exceed seventy-two hours after the child has been taken into custody. Also, in the event that the court does not sit on the following day within the county or city wherein the charge against the child is pending, the court may conduct the hearing in another city or county, but only if two-way electronic video and audio communication is available in the courthouse of the county or city wherein the charge is pending. However, if the seventy-two hour period expires on a Saturday, Sunday or other legal holiday, the seventy-two hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday. The court may subpoena witnesses to assist in determining probable cause, in which case the hearing may be continued and the child remain in detention, but in no event longer than three consecutive days, exclusive of Saturdays, Sundays, and legal holidays.

Further procedures for the detention hearing include:

- Notice of the hearing or any rehearing shall be given to the parent, guardian, legal custodian, or other person standing *in loco parentis*, to the child if 12 years of age or older, to the child's attorney, to the probation and parole department of the local or state court services unit, and to the attorney for the Commonwealth. This notice may be either oral or written.
- Prior to the detention hearing, an attorney must be appointed to represent the child at the detention hearing unless the child has retained an attorney who appears on his or her behalf. Indigency is presumed for purposes of appointment of counsel for the detention hearing. [Va. Code § 16.1-266 \(B\)](#).
- The judge shall advise the parties during the hearing of the child's right to remain silent, and the contents of the petition. The attorney for the Commonwealth shall be given the opportunity to be heard.
- The juvenile, the attorney for the Commonwealth, the attorney for the child and the parent, guardian, legal custodian or other person standing *in loco parentis* may appear in person or by means of a two-way electronic video and audio communication system that meets the standards of [Va. Code § 19.2-3.1 \(B\)](#). Any documents filed in such a hearing may be transmitted by electronic facsimile process. The fax may be served by the officer to whom it is sent with the same force and effect as if it were an original document.
- If the judge finds that there is not probable cause to believe the child committed the delinquent act alleged, the court shall order his or her release.
- If the judge finds that there is probable cause to believe that the child committed the delinquent act but that full-time detention is not required, the court shall order his release subject to conditions imposed by the court. In determining probable cause, the judge may consider information that is not otherwise competent as evidence.
- If a child is not released and a parent, guardian, legal custodian or other person standing *in loco parentis* is not notified and does not appear or does not waive appearance at the hearing, upon request of such person, the court shall rehear the matter on the next court day or within seventy-two hours after the request.
- If a child is not released after a detention hearing and the child was not represented by a lawyer, the court shall afford the child an opportunity to be represented by a lawyer prior to a detention review hearing. If the lawyer requests, a detention review hearing must be scheduled as soon as practicable but no later than seventy-two hours after such request is made. If the seventy-two

hour period ends on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the time period is extended to the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed. At the review hearing, the judge reviews the need for continued detention. Notice of the hearing, either oral or written, is given to the parent, guardian or other person standing *in loco parentis* (if he can be found), to the attorney, and to the child, if twelve years old or older, and to the attorney for the Commonwealth, who shall be given an opportunity to be heard. [Va. Code § 16.1-250 \(D\)](#).

If the Juvenile and Domestic Relations District Court releases the juvenile over the objection of the Commonwealth, the attorney for the Commonwealth may appeal the decision to the circuit court. The appeals should be noted on the DC-580, NOTICE OF APPEAL - CRIMINAL.

### Competency to Stand Trial

#### [Va. Code § 16.1-356](#)

At any time between appointment or retention of an attorney and the end of trial, on motion of either the Commonwealth's Attorney or the attorney for the juvenile or on the court's own motion, the judge may hear evidence to determine whether there is probable cause to believe that the juvenile lacks substantial capacity to understand the proceedings against him or to assist in his own defense. If that probable cause is found:

- The court orders a competency evaluation to be performed by at least one psychiatrist, clinical psychologist, licensed professional counselor, licensed clinical social worker or licensed marriage and family therapist who is qualified by training and experience in the forensic evaluation of juveniles.
- This evaluation should be performed on a local outpatient basis, unless the court specifically finds:
  - The results of the outpatient competency evaluation indicate that hospitalization of the juvenile for evaluation of competency is necessary; or
  - The juvenile is currently hospitalized in a psychiatric hospital.
- Inpatient evaluation should be ordered only if one of the above situations exists. If inpatient evaluation is to be used, the evaluating facility is selected by the Commissioner of the [Department of Behavioral Health and Developmental Services](#) (whose designee at the Office of Forensic Services may be contacted at (804) 786-4837 to ascertain to which hospital the juvenile should be transported). The length of stay is determined by the director of the hospital based on the director's determination of the time necessary to perform an adequate evaluation, but it is not to exceed ten days from the date of admission to the hospital.

The court shall require the Commonwealth's Attorney, the juvenile's attorney and the moving party to provide the evaluator with specified information within ninety-six hours of issuance of the order requiring the evaluation, or if the ninety-six hours ends on a Saturday, Sunday or holiday, on the next business day.

The Commonwealth's attorney must provide any information relevant to the evaluation, including but not limited to:

- a copy of the warrant or petition,
- the names and addresses of the attorney for the Commonwealth, the attorney for the juvenile and the judge ordering the evaluation, and
- information about the alleged offense.

The defendant's attorney must provide the evaluator with any available psychiatric records or other information that is deemed relevant.

The moving party must provide the evaluator with a summary of the reasons for the evaluation request.

The clerk will prepare and (after signature by the judge) distribute district court form DC-522, ORDER FOR EVALUATION TO DETERMINE COMPETENCY TO STAND TRIAL - JUVENILE, and, if needed, a district court form DC-354, Custodial Transportation Order after which the sheriff will be notified of the need for transporting the juvenile.

The appointed evaluator or director of the facility must acknowledge receipt of the order for evaluation to the clerk of court by close of business on the next business day after the order is received. At the time of acknowledgement, inform the court if the evaluation is unable to be conducted. Both of these provisions are contained on the acknowledgment portion of the DC-522, ORDER FOR EVALUATION TO DETERMINE COMPETENCY TO STAND TRIAL – JUVENILE.

The evaluator must submit a report in writing to the court and the attorneys of record within fourteen days after receipt of all the required information. The report must address:

- The juvenile's capacity to understand the proceedings against him;
- The juvenile's ability to assist his attorney;
- The juvenile's need for services in the event he is found incompetent, including a description of the suggested necessary services and the least restrictive setting to assist the juvenile in restoration to competency

After receiving the evaluation report, the court must promptly determine whether the juvenile is competent to stand trial. A hearing is not required unless the Commonwealth

or the attorney for the defendant requests it. If a hearing is held, the juvenile has a right to notice of the hearing and the right to personally participate and introduce evidence. The party alleging that the juvenile is incompetent bears the burden of proving the juvenile's incompetency by a preponderance of the evidence.

If the judge finds that the juvenile is incompetent to stand trial and that treatment is required to restore the juvenile to competency, then the judge shall enter district court form DC-523, ORDER FOR PROVISION OF RESTORATION SERVICES TO INCOMPETENT JUVENILE. A finding of incompetency should not be made based solely on any or all of the following:

- The juvenile's age or developmental factors,
- The juvenile's claim to be unable to remember the time period surrounding the alleged offense,
- The fact that the juvenile is under the influence of medication.

**NOTE:** A copy of the order must be forwarded to the Commissioner of [Department of Behavioral Health and Developmental Services](#), who shall arrange the provision of restoration services in a manner consistent with the order.

The district court form DC-523, ORDER FOR PROVISION OF RESTORATION SERVICES to the Incompetent Juvenile should indicate whether the juvenile will receive services to restore his competency in a nonsecure community setting or a secure facility as defined in [Va. Code § 16.1-228](#).

If the court finds that the juvenile is restorable to competency in the foreseeable future, it shall order restoration services for up to three months.

If the agent providing restoration services believes the juvenile's competency has been restored, the agent shall immediately send a report to that effect to the court and the court shall make a ruling on the juvenile's competency in accordance with the procedures above.

**NOTE:** No statements of the juvenile relating to the alleged offense shall be included in the evaluation report. In addition, no statement or disclosure by the juvenile concerning the alleged offense made during a competency evaluation or provision of services may be used against the juvenile at the adjudication or disposition hearings as evidence or as a basis for such evidence.

At the end of the three months, if the juvenile remains incompetent, the agent providing restoration services shall notify the court and make recommendations concerning disposition of the juvenile. The court shall hold a hearing and if the court finds that:



- that the juvenile is restorable, it may order continued restoration services for additional three month periods, provided a hearing is held at the completion of each such period.
- that the juvenile is unrestorably incompetent, it shall order one of the dispositions pursuant to [Va. Code § 16.1-358](#). (See below for the disposition alternatives).

If the initial evaluator or the agent providing restoration services concludes that the juvenile is likely to remain incompetent for the foreseeable future, a report stating so should be sent to the court. The report shall also provide recommendations for the disposition of the juvenile. The court may order that:

- the juvenile be committed pursuant to Article 16 of Chapter 11 of Title 16.1, or, if the juvenile has reached the age of eighteen at the time of the competency determination, pursuant to [Va. Code §§ 37.2-814](#) to 37.2-820
- the juvenile be certified pursuant to [Va. Code § 37.2-806](#)
- a child in need of services petition be filed on the juvenile's behalf pursuant to [Va. Code § 16.1-260 \(D\)](#) or
- the juvenile be released.

If the charges are not dismissed without prejudice at an earlier time, charges against an unrestorably incompetent juvenile shall be dismissed as follows:

- in the case of a charge which would be a misdemeanor if committed by an adult, one year from the date of the juvenile's arrest for the charge.
- in the case of a charge which would be a felony if committed by an adult, three years from the date of the juvenile's arrest for such charge.

**Compensation of Experts:** Each psychiatrist, clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed marriage and family therapist or other expert appointed by the court, except services provide by state mental health, hospitals or training centers, shall receive a reasonable fee determined by the court that appointed the expert. The fee should be determined in accordance with the guidelines established by the Supreme Court. If the expert is required to appear as a witness, the expert shall receive mileage and a fee of \$100 for each day during which he is required to serve. [Va. Code § 16.1-361](#).

### **Sexually Transmitted Infections Testing**

The attorney for the Commonwealth may request after consultation with a complaining witness, or shall request upon the request of the complaining witness, that any person

charged with (i) any crime involving sexual assault pursuant to this article; (ii) any offense against children as prohibited by §§ 18.2-361, 18.2-366, 18.2-370, and 18.2-370.1; or (iii) any assault and battery, and where the complaining witness was exposed to body fluids of the person so charged in a manner that may, according to the then-current guidelines of the Centers for Disease Control and Prevention, transmit a sexually transmitted infection, be requested to submit to diagnostic testing for sexually transmitted infections and any follow-up testing as may be medically appropriate. The person so charged shall be counseled about the meaning of the tests and about the transmission, treatment, and prevention of sexually transmitted infections. If the person so charged refuses to submit to testing or the competency of the person to consent to testing is at issue, the court with jurisdiction of the case shall hold a hearing in a manner as provided by § 19.2-183, as soon as practicable, to determine whether there is probable cause that the individual has committed the crime with which he is charged and that the complaining witness was exposed to body fluids of the person so charged in a manner that may, according to the then-current guidelines of the Centers for Disease Control and Prevention, transmit a sexually transmitted infection. If the court finds probable cause, the court shall order the person so charged to undergo testing for sexually transmitted infections. The court may enter such an order in the absence of the person so charged if the person so charged is represented at the hearing by counsel or a guardian ad litem. The court's finding shall be without prejudice to either the Commonwealth or the person charged and shall not be evidence in any proceeding, civil or criminal. At any hearing before the court, the person so charged or his counsel may appear. Form DC 3010, Request for Sexually Transmitted Infection Testing Pursuant to §18.2-61.1, and Form CC 1390, Order for DNA or Sexually Transmitted Infections Testing are used to complete this process. The motion is not indexed by the clerk's office separately from the underlying case and no costs are associated with the testing for juveniles. Test results are sealed in the court's file pending the court hearing.

### Subpoenas, Witness Summoning

The procedures for witness subpoenas are described in this manual, "Criminal Case Procedures- Pre-Trial Procedures". The same basic procedures apply in the juvenile and domestic relations district court. Law enforcement officers may issue subpoenas to witnesses in traffic infraction cases and in cases charging a Class 3 or Class 4 misdemeanor. Even though delinquency proceedings are often described as having characteristics of civil proceedings, the provisions for attorney-issued subpoenas in other civil proceedings *do not* apply to delinquency proceedings. [Va. Code § 8.01-407 \(A\)](#).

## Juvenile Felony

### Confidentiality

Unless closed by the judge by entry of district court form DC-501, Order to Close Hearing, a hearing on a felony case involving a juvenile 14 years of age or older, is open to the public. Pursuant to [Va. Code § 16.1-305 \(B1\)](#), the court records are not open to the public until there is an adjudication of guilt on a felony case for a juvenile age fourteen or older. Records that are excluded from public record include social, medical, psychiatric or psychological reports, including preliminary inquiries, predisposition studies and supervision records. The judge may also order certain records in the file closed to protect the juvenile victim or a juvenile witness. Please note that an order transferring a juvenile or certifying a juvenile to the Circuit Court for trial does not constitute an adjudication of guilt and therefore, the records are not open to the public.

### Cases that May Be Tried in Circuit Court

Under certain circumstances, juveniles charged with felonies who are fourteen years of age and older, may be tried in the circuit court of the jurisdiction in which the offense occurred. The case begins in the juvenile and domestic relations district court, and depending on the severity of the offense, the Commonwealth's Attorney and the district court may take the following actions:

- If the juvenile is 14 years of age or older at the time of the alleged offense, Pursuant to [Va. Code § 16.1-269.1 \(A\)](#), upon motion of the Commonwealth's Attorney, and except as provided for under subsections B and C, the court shall conduct a transfer hearing. Notice of the transfer hearing is provided to the juvenile and his parent, guardian, legal custodian, or person standing *in loco parentis*; or attorney, by the JDR clerk's office. **If the Court finds probable cause and the other conditions are met pursuant to [Va. Code § 16.1-269.1](#), 1-4, the juvenile is transferred to the circuit court for hearing.**

Within seven days after receipt of notice of an appeal from the transfer decision pursuant to subsection A of [Va. Code § 16.1-269.1](#), by either the attorney for the Commonwealth or the juvenile, or if an appeal to such a decision to transfer is not noted, upon expiration of the time in which to note such an appeal, the clerk of the court shall forward to the circuit court all papers connected with the case, including any report required by

subsection B of [Va. Code § 16.1-269.2](#), as well as a written court order setting forth the reasons for the juvenile court's decision. Within seven days after receipt of notice of an appeal, the clerk shall forward copies of the order to the attorney for the Commonwealth and other counsel of record. [Va. Code § 16.1-269.6](#).

- If the juvenile is 16 years of age or older at the time of the alleged offense Pursuant to [Va. Code § 16.1-269.1 \(B\)](#), in cases of murder in violation of [Va. Code §§ 18.2-31](#), [18.2-32](#), or [18.2-40](#), or aggravated malicious wounding in violation of [Va. Code § 18.2-51.2](#), the Court shall conduct a preliminary hearing. No motion or notice is required on behalf of the Commonwealth. **Similar to an adult preliminary hearing, the juvenile is certified to the grand jury if the court finds probable cause.**

Upon motion of the juvenile, the court may conduct a hearing to allow the juvenile to present any evidence that the juvenile was a victim of felonious criminal sexual assault in violation of Article 7 ([Va. Code §18.2-61 et seq.](#)) of Chapter 4 of Title 18.2 or trafficking in violation of Article 3 ([Va. Code §18.2-344 et seq.](#)) of Chapter 8 of Title 18.2 by the alleged victim prior to or during the commission of the alleged offense. If the court finds by a preponderance of the evidence that sufficient evidence exists to believe that the juvenile was a victim and that such alleged offense was a direct result of the juvenile being a victim of such felonious criminal sexual assault or trafficking, then the court shall proceed as provided in [Va. Code § 16.1-269.1 \(A\)](#) and a motion to transfer is required on behalf of the Commonwealth.

- If the juvenile is 14 or 15 years of age at the time of the alleged offense, the court may proceed with a transfer hearing on motion of the attorney for the Commonwealth pursuant to [Va. Code § 16.1-269.1 \(A\)](#).
- If the juvenile is 16 years of age or older at the time of the alleged offense Pursuant to [Va. Code § 16.1-269.1 \(C\)](#), in cases of murder in violation of [Va. Code § 18.2-33](#), injury by mob in violation of [Va. Code § 18.2-41](#), abduction in violation of [Va. Code § 18.2-48](#), malicious wounding in violation of [Va. Code § 18.2-51](#), malicious wounding of law enforcement in violation of [Va. Code § 18.2-51.1](#), poisoning in violation of [Va. Code § 18.2-54.1](#), adulteration of

products in violation of [Va. Code § 18.2-54.2](#), robbery in violation of [Va. Code § 18.2-58](#), carjacking in violation of [Va. Code § 18.2-58.1](#), rape in violation of [Va. Code § 18.2-61](#), forcible sodomy in violation of [Va. Code § 18.2-67.1](#), object sexual penetration in violation of [Va. Code § 18.2-67.2](#); manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance in violation of [§ 18.2-248](#) if the juvenile has been previously adjudicated delinquent on two or more occasions of violating [§ 18.2-248](#) provided the adjudications occurred after the juvenile was at least 16 years of age; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of [§ 18.2-248.03](#), if the juvenile has been previously adjudicated delinquent on two or more occasions of violating [§ 18.2-248.03](#) provided the adjudications occurred after the juvenile was at least 16 years of age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in violation of [§ 18.2-248.5](#) if the juvenile has been previously adjudicated delinquent on two or more occasions of violating [§ 18.2-248.5](#) provided the adjudications occurred after the juvenile was at least 16 years of age, the Court shall conduct a preliminary hearing, provided that the Commonwealth gives written notice of his intent to proceed under subsection C. Prior to giving written notice of his intent to proceed pursuant to this subsection, the attorney for the Commonwealth shall submit a written request to the director of the court services unit to complete a report as described in [§16.1-269.2\(B\)](#) unless waived by the juvenile and his attorney or other legal representative. The report shall be filed with the court and mailed or delivered to (i) the attorney for the Commonwealth and (ii) counsel for the juvenile, or, if the juvenile is not represented by counsel, to the juvenile and a parent, guardian, or other person standing in loco parentis with respect to the juvenile, within 21 days of the date of the written request. After reviewing the report, if the attorney for the Commonwealth still intends to proceed pursuant to this subsection, he shall then provide the written notice of such intent, which shall include affirmation that he reviewed the report. **Similar to an adult preliminary hearing, the juvenile is certified to the grand jury if the court finds probable cause.**

Upon motion of the juvenile, the court may conduct a hearing to allow the juvenile to present any evidence that the juvenile was a

victim of felonious criminal sexual assault in violation of Article 7 ([Va. Code §18.2-61](#) *et seq.*) of Chapter 4 of Title 18.2 or trafficking in violation of Article 3 (Va. Code §18.2-344 *et seq.*) of Chapter 8 of Title 18.2 by the alleged victim prior to or during the commission of the alleged offense. If the court finds by a preponderance of the evidence that sufficient evidence exists to believe that the juvenile was a victim and that such alleged offense was a direct result of the juvenile being a victim of such felonious criminal sexual assault or trafficking, then the court shall proceed as provided in [Va. Code § 16.1-269.1 \(A\)](#) and a motion to transfer is required on behalf of the Commonwealth.

Clerk's Procedures for :

A Juvenile Pursuant to [Va. Code § 16.1-269.1 \(A\)](#)

The following procedures are recommended in processing a juvenile pursuant to [Va. Code § 16.1-269.1 \(A\)](#) .

These are proceedings in which the judge is making a determination of whether or not the juvenile should be tried as an adult. The clerk's office will know the Commonwealth is requesting the judge make this determination when notice is filed with the clerk prior to the adjudicatory hearing or if the Commonwealth proceeds under subsection (A) on charges that fall under subsection (C).

STEP	DESCRIPTION
<b>1</b>	<p>The Clerk's office receives a petition or a warrant alleging a juvenile fourteen or older has committed a felony.</p> <p>CCRE and a fingerprint card may accompany the petition/warrant. These documents should be kept with the file until the case is finalized.</p> <p>Additional petitions/warrants may be filed which include ancillary charges. These charges are heard with the felony adjudication and may also be transferred.</p> <p>Definition of Ancillary Charge: Delinquent act, misdemeanor or felony, committed by juvenile as part of a common scheme or plan with a delinquent violent felony.</p>
<b>2</b>	<p>If the juvenile has been detained, the court shall hold a detention hearing as soon as possible, not to exceed seventy-</p>

STEP	DESCRIPTION
	<p>two hours unless the period expires on a Saturday, Sunday or other legal holiday, then the next business day.</p> <p><b>If detained</b>, district court form DC-529, DETENTION ORDER/CAPIAS PURSUANT TO § 16.1-247(K), will be filed. This hearing may be held using video conferencing.</p> <p><b>If not detained</b>, it is recommended that the JDR clerk's office set an attorney advisement as soon as possible and provide proper notice pursuant to <a href="#">Va. Code §§ 16.1-263</a> and <a href="#">16.1-264</a>.</p>
<b>3</b>	<p>Enter the petition/warrant in JCMS and schedule for a detention hearing and attorney advisement, if detained, or an attorney advisement, if not detained. The case is assigned a "petition" or "charge" number. Index in JCMS using the following codes:</p> <p>Case type: <b>DF</b> delinquent felony Hearing type: <b>DT</b> detention hearing <b>AA</b> attorney advisement</p>
<b>4</b>	<p>If scheduling a detention hearing: unless the juvenile has retained counsel and he is present at the detention hearing, the Court shall appoint counsel and have him present at the detention pursuant to <a href="#">Va. Code § 16.1-266 (B)</a>. The Commonwealth's Attorney should be notified of the date and time of the detention hearing. District court form DC-354, CUSTODIAL TRANSPORTATION ORDER, should be entered if the juvenile is at the detention home and the hearing is not scheduled using video conferencing.</p> <p>Pursuant to <a href="#">Va. Code § 16.1-266 (C)(3)</a>, a child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive right to counsel only after he consults with an attorney and the court determines that his waiver is free and voluntary. The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case.</p> <p>Orders should be charge specific in case certain offenses are certified and others dismissed or reduced.</p>
<b>5</b>	<p>Detention hearing and/or attorney advisement conducted.</p> <p>If held by video conferencing, <a href="#">Va. Code § 16.1-250</a> applies and requires that at least one of the following parties appears in the jurisdiction in which the offense occurred: the judge, the</p>



STEP	DESCRIPTION
5 (cont'd)	<p>juvenile, the commonwealth's attorney, the attorney for the child, or the parent(s), guardian, or legal custodian.</p> <p>If persons listed on the petition or parents, legal custodian, guardian, or persons standing <i>in loco parentis</i>, have not been served with petition/warrant(s), a summons and a copy of the charging document should be served on them prior to the commencement of the detention hearing.</p> <p>District court form DC-513, ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL should be used.</p> <p>At the conclusion of the detention hearing, <b>if the juvenile remains detained</b>, the court shall schedule the preliminary hearing within twenty-one days from the date he was first detained pursuant to <a href="#">Va. Code § 16.1-277.1</a>. Parents and witnesses should sign the district court form DC-329, RECOGNIZANCE to return on the date of the preliminary hearing.</p> <p>If not detained, the Court would have the juvenile sign the district court form DC-329, RECOGNIZANCE for the preliminary hearing date, which must be set within 120 days from the date the petition or warrant was filed with the clerk's office pursuant to <a href="#">Va. Code § 16.1-277.1</a>.</p> <p><b>If detained</b>, the Court may set a bond amount and bail conditions. This information can be recorded on Form DC-569, ORDER or an order provided by the court.</p> <p>Prior to trial, the bail decision may be appealed to circuit court. (See appendix on "Appeals".)</p> <p>The court granting or denying such bail, ordering any increase or ordering new or additional sureties may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court. No such stay may be granted after any person who has been granted bail has been released from custody on such bail. <a href="#">Va. Code § 19.2-124</a></p> <p>A district court form DC-538, PLACEMENT ORDER must be entered by the court to return the juvenile to the detention home if so ordered.</p>

STEP	DESCRIPTION
	<p>The following motions may be filed in conjunction with the felony proceedings:</p> <ul style="list-style-type: none"> <li>– Competency to Stand Trial</li> <li>– Motion to Suppress</li> <li>– Motion for Testimony Via Closed-Circuit Television</li> </ul>
6	<p>Prior to the adjudicatory hearing, the clerk's office receives from the Commonwealth Attorney's office a Motion to Transfer pursuant to <a href="#">Va. Code § 16.1-269.1 (A)</a>. The clerk's office sends notice of the motion to counsel for the juvenile, the juvenile and a parent, guardian or other person standing <i>in loco parentis</i>. The district court form DC-519, NOTICE OF TRANSFER HEARING should be used to send this required notice. The clerk's office should file the motion and a copy of the notice with the case papers.</p> <p>The Motion for Transfer filed by the Commonwealth Attorney may have the request for a Transfer Report incorporated into the motion with a certified copy of the motion to the Court Service's Unit. The clerk's office should prepare district court form DC-542, ORDER FOR INVESTIGATION AND REPORT ordering the Court Service's Unit to prepare a Transfer Report pursuant to <a href="#">Va. Code § 16.1-269.1 (A)(4)</a>. The judge must sign. Keep the original in the file and give a copy to CSU immediately.</p>
7	<p>If the judge orders the hearing closed, district court form DC-501, ORDER TO CLOSE HEARING should be entered.</p> <p><a href="#">Virginia Code § 16.1-277.1 (D)</a>, requires that in cases where the juvenile is detained in a secure facility, the twenty-one day time limitation for the transfer hearing can only be extended by the court for a reasonable period of time based upon good cause shown, AND that the basis for such extension be recorded in writing and filed with the proceedings.</p>
7 (cont'd)	<p>Transfer hearing conducted.</p> <p>District court form DC-518, TRANSFER/ RETENTION ORDER should be used to record the court's findings.</p> <p>If the court finds the juvenile should be transferred, the case is tried in Circuit Court. If the court finds the juvenile should remain before the Juvenile Court, the trial may take place in</p>

STEP	DESCRIPTION
	<p>conjunction with the Transfer Hearing, or may be continued for another date. See the following section dealing with Adjudication in the JDR Court.</p> <p>Orders should be charge specific in case certain offenses are certified and others dismissed or reduced.</p> <p>The juvenile may waive jurisdiction of the case. District court form DC-517, <a href="#">WAIVER OF JURISDICTION</a> should be signed by the juvenile and counsel for the juvenile.</p> <p>If remanded to detention, district court form DC-538, PLACEMENT ORDER should be used.</p> <p>If a juvenile is held in secure detention after completion of an adjudicatory hearing or transfer hearing, then the juvenile must be released if the disposition hearing is not completed within thirty days from the adjudicatory or transfer hearing, therefore timely processing is necessary.</p> <p>The juvenile may appeal the decision to transfer the charges or the Commonwealth may appeal the decision not to transfer the charges. District court form DC-580, NOTICE OF APPEAL – CRIMINAL should be used.</p>
<b>8</b>	<p>If transferred finalize the case(s) in JCMS using the following Final Disposition codes:</p> <p><b>TA</b> Transferred as Adult</p> <p>When the juvenile court is notified by the circuit court that the juvenile has been tried as an adult, the <b>ADULT</b> field should be flagged with an <b>X</b> on the H/D Tab JCMS.</p> <p><b>X</b> will cause a flag on the juvenile name index to display, which will provide a warning to the users that petitions or juvenile summons should no longer be received for the defendant.</p>
<b>8</b> (cont'd)	<p>When a juvenile is transferred to the Circuit Court for trial and is convicted of such offenses, all future criminal and traffic proceedings shall be handled as if the juvenile were an adult. Only those criminal proceedings that would fall under the jurisdiction of the Juvenile and Domestic Relations District Court</p>

STEP	DESCRIPTION
	<p>for an adult shall be filed against the juvenile in a JDR court for processing.</p> <p>However, such an order terminating the juvenile court's jurisdiction shall not apply to any allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and domestic relations district court if the defendant were an adult. Upon receipt of the order terminating the juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending petitions of delinquency for proceedings in the appropriate general district court. The adjudication as an adult does not affect civil proceedings.</p> <p>Retain a copy of case papers for juvenile file and forward originals to the Circuit Court, including any CCRE documents. District court form DC-575, CONFIDENTIAL MATERIALS – JUVENILE CASE APPEAL/TRANSFER TRANSMITTAL should be used to transmit papers. If juvenile is remanded to detention pending the hearing in Circuit, placement should be noted on the transmittal.</p> <p>If the petition/warrant is dismissed or not guilty, the fingerprints and photographs are to be destroyed within sixty days after final disposition.</p>

Processing a Juvenile, age 16 or older at the time of the offense, pursuant to Va. Code § 16.1-269.1 (B).

The following procedures are recommended in processing a juvenile pursuant to [Va. Code § 16.1-269.1 \(B\)](#). **When the listed charges are filed, a preliminary hearing is mandatory.**

STEP	DESCRIPTION
<b>1</b>	<p>The Clerk's office receives a petition or a warrant alleging a juvenile, age 16 or older at the time of the offense, has committed one of the following offenses:</p> <ul style="list-style-type: none"> <li>- Capital Murder (<a href="#">§ 18.2-31</a>)</li> <li>- First Degree Murder (<a href="#">§ 18.2-32</a>)</li> <li>- Second Degree Murder (<a href="#">§ 18.2-32</a>)</li> <li>- Murder by Lynching (<a href="#">§ 18.2-40</a>)</li> <li>- Aggravated Malicious Wounding (<a href="#">§ 18.2-51.2</a>)</li> </ul>

STEP	DESCRIPTION
	<p>CCRE and a fingerprint card may accompany the petition/warrant. These documents should be kept with the file until the case is finalized.</p> <p>Additional petitions/warrants may be filed which include ancillary charges. These charges are heard with those set for preliminary hearing and may also be certified.</p> <p>Definition of Ancillary Charge – Delinquent act, misdemeanor or felony, committed by juvenile as part of a common scheme or plan with a delinquent violent felony.</p>
<b>2</b>	<p>If the juvenile has been detained, the court shall hold a detention hearing as soon as possible, not to exceed seventy-two hours unless the period expires on a Saturday, Sunday or other legal holiday, then the next business day. <b>If detained</b>, a district court form DC-529, DETENTION ORDER/CAPIAS PURSUANT TO § 16.1-247(K) will be filed.</p> <p>It would be unlikely that the juvenile would not be detained if charged with one of the offenses listed. <b>If not detained</b>, it is recommended that the JDR clerk's office set an attorney advisement as soon as possible, and provide proper notice pursuant to <a href="#">Va. Code §§ 16.1-263</a> and <a href="#">16.1-264</a>.</p> <p>This hearing may be held using video conferencing. Please see STEP 5.</p>
<b>3</b>	<p>Enter the petition/warrant in JCMS and schedule for a detention hearing. The case is assigned a "petition" or "charge" number.</p> <p>Index in JCMS using the following codes:  Case type: <b>DF</b> delinquent felony  Hearing type: <b>DT</b> detention hearing</p>
<b>3</b> <i>cont'd</i>	<p><b>If the juvenile is not detained</b>, hearing type <b>AA</b> should be used</p>
<b>4</b>	<p>Unless the juvenile has retained counsel and he is present at the detention hearing, the court shall appoint counsel and have him present at the detention pursuant to <a href="#">Va. Code § 16.1-266 (B)</a>.</p> <p>The Commonwealth's Attorney should be notified of the date and time of the detention hearing.</p> <p>DC-513, ADVISEMENT AND REQUEST FOR APPOINTMENT OF</p>

STEP	DESCRIPTION
	<p>COUNSEL should be used.</p> <p>A district court form DC-354, CUSTODIAL TRANSPORTATION ORDER should be entered if the juvenile is at the detention home and the hearing is not scheduled using video conferencing.</p> <p>Also pursuant to <a href="#">Va. Code § 16.1-266 (C3)</a>, a child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive right to counsel only after he consults with an attorney and the court determines that his waiver is free and voluntary.</p> <p>The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case.</p> <p>Orders should be charge specific in case certain offenses are certified and others dismissed.</p> <p><b>Comments:</b> If the charge is a capital offense, please see the COURT APPOINTED COUNSEL GUIDELINES &amp; PROCEDURES MANUAL on the intranet regarding appointment of counsel in capital cases.</p>
<p><b>5</b></p> <p><b>5</b> <i>cont'd</i></p>	<p>Detention hearing and attorney advisement conducted.</p> <p>If persons listed on the petition or parents, legal custodian, guardian, or persons standing <i>in loco parentis</i>, have not been served with petition/warrant(s), a summons and a copy of the charging document should be served on them prior to the commencement of the detention hearing.</p> <p>At the conclusion of the detention hearing, if the juvenile remains detained, the court shall schedule the preliminary hearing within twenty-one days from the date he was first detained pursuant to <a href="#">Va. Code § 16.1-277.1</a>. Parents and witnesses should sign the district court form DC-329, RECOGNIZANCE, to return on the date of the preliminary hearing. If not detained, the Court would have the juvenile sign district court form DC-329, RECOGNIZANCE for the preliminary hearing date, which must be set within 120 days from the date the petition or warrant was filed with the clerk's office pursuant to <a href="#">Va. Code § 16.1-277.1</a>. <b>If detained</b>, the Court may set a bond amount and bail conditions. This information can be recorded on district court form DC-569, Order.</p>

STEP	DESCRIPTION
	<p>Prior to trial, the bail decision may be appealed to circuit court. (See appendix on “Appeals”.)</p> <p>The court granting or denying such bail, ordering any increase, or ordering new or additional sureties may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court. No such stay may be granted after any person who has been granted bail has been released from custody on such bail. <a href="#">Va. Code § 19.2-124</a></p> <p>A district court form DC-538, PLACEMENT ORDER must be entered by the court to return the juvenile to the detention home if so ordered.</p> <p>If held by video conferencing, <a href="#">Va. Code § 16.1-250</a> applies and requires that at least one of the following parties appears in the jurisdiction in which the offense occurred: the judge, the juvenile, the commonwealth’s attorney, the attorney for the child, or the parent(s), guardian, or legal custodian. The following motions may be filed in conjunction with the felony proceedings:</p> <ul style="list-style-type: none"> <li>- Competency to Stand Trial</li> <li>- Motion to Suppress</li> <li>- Motion for Testimony Via Closed-Circuit Television</li> </ul>
6	<p>If the judge orders the hearing closed, district court form DC-501, ORDER TO CLOSE HEARING should be entered.</p> <p>Preliminary hearing conducted. If the court finds that probable cause exists, the case is certified, along with any ancillary charges, to the grand jury. District court form DC-520, CERTIFICATION OF JUVENILE FELONY CHARGE is used to record the certification of the charges.</p> <p><a href="#">Virginia Code § 16.1-277.1 (D)</a>, requires that in cases where the juvenile is detained in a secure facility, the twenty-one day time limitation for the preliminary hearing can only be extended by the court for a reasonable period of time based upon good cause shown, AND that the basis for such extension be recorded in writing and filed with the proceedings.</p>



STEP	DESCRIPTION
	<p>The juvenile may waive his right to a preliminary hearing. District court form DC-521, <a href="#">WAIVER OF PRELIMINARY HEARING AND CERTIFICATION</a> should be used.</p> <p>If remanded to detention, district court form DC-538, PLACEMENT ORDER should be used.</p> <p>The juvenile may appeal the decision to certify the charges. District court form DC-580, NOTICE OF APPEAL – CRIMINAL should be used.</p> <p>Orders should be charge specific in case certain offenses are certified and others dismissed.</p>
7	<p>If certified or dismissed, finalize the cases(s) in JCMS using the following Final Disposition codes:</p> <p style="padding-left: 40px;"><b>GJ</b> Grand Jury <b>D</b> Dismissed</p> <p>Retain a copy of case papers for juvenile file in accordance to local policy, and forward originals to the Circuit Court, including any CCRE documents. District court form DC-575, CONFIDENTIAL MATERIALS – JUVENILE CASE APPEAL/TRANSFER TRANSMITTAL should be used to transmit papers. If juvenile is remanded to detention pending the hearing in Circuit, placement should be noted on the transmittal.</p> <p>When the juvenile court is notified by the circuit court that the juvenile has been tried as an adult, the <b>ADULT</b> field should be flagged with an <b>X</b> on the H/D tab in JCMS.</p> <p><b>X</b> will cause a flag on the juvenile name index to display, which will provide a warning to the users that petitions or juvenile summons should no longer be received for the defendant. <a href="#">Virginia Code § 16.1-271</a> states “Conviction of a juvenile as an adult pursuant to the provisions of this chapter shall preclude the juvenile court from taking jurisdiction of such juvenile for subsequent offenses committed by that juvenile.”</p> <p>When a juvenile is certified to the Circuit Court for trial and is convicted of such offenses, all future criminal and traffic proceedings shall be handled as if the juvenile were an adult. Only those criminal proceedings that would fall under the jurisdiction of the Juvenile and Domestic Relations District Court for an adult shall be filed against the juvenile in a JDR court for processing.</p>

STEP	DESCRIPTION
<b>7</b> <i>cont'd</i>	<p>The adjudication as an adult does not affect civil proceedings.</p> <p>If the court does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the circuit court. If the petition or warrant is terminated by <i>nolle prosequi</i> in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.</p> <p>Regardless of the disposition of the case, the fingerprints and photographs are to be forwarded to the CCRE at final disposition.</p>

A Juvenile, age 16 or older at the time of the offense, pursuant to Va. Code § 16.1-269.1 (C).

The following procedures are recommended in processing a juvenile pursuant to [Va. Code § 16.1-269.1 \(C\)](#):

The clerk's office will know the Commonwealth is proceeding under this code section when notice is filed with the clerk at least seven days prior to the preliminary hearing.

Note: The court will receive a report from the Court Services Unit at least twenty-one days prior to the Commonwealth's written notice of his intent to proceed under this code section.

STEP	DESCRIPTION
<b>1</b> <i>cont'd</i>	<p>The Clerk's office receives a petition or a warrant alleging a juvenile, age 16 or older at the time of the offense, has committed one of the following offenses:</p> <ul style="list-style-type: none"> <li>- Murder (<a href="#">§ 18.2-33</a>),</li> <li>- Injury by mob (<a href="#">§ 18.2-41</a>), Abduction (<a href="#">§ 18.2-48</a>),</li> <li>- Mal. wounding(<a href="#">§ 18.2-51</a>),</li> <li>- Mal. wounding of law enforcement (<a href="#">§ 18.2-51.1</a>),</li> <li>- Poisoning (<a href="#">§ 18.2-54.1</a>),</li> <li>- Adulteration of products (<a href="#">§ 18.2-54.2</a>),</li> <li>- Robbery (<a href="#">§ 18.2-58</a>),</li> <li>- Carjacking (<a href="#">§ 18.2-58.1</a>),</li> <li>- Rape (<a href="#">§ 18.2-61</a>),</li> <li>- Forcible sodomy (<a href="#">§ 18.2-67.1</a>),</li> <li>- Object sexual penetration (<a href="#">§ 18.2-67.2</a>),</li> </ul>

STEP	DESCRIPTION
	<ul style="list-style-type: none"> <li>- Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance in violation of § <a href="#">18.2-248</a>,</li> <li>- Manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of § <a href="#">18.2-248.03</a>,</li> <li>- Felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in violation of § <a href="#">18.2-248.5</a>.</li> </ul> <p>A CCRE and a fingerprint card may accompany the petition/warrant. These documents should be kept with the file until the case is finalized.</p> <p>Additional petitions/warrants may be filed which include ancillary charges. These charges are heard with those set for preliminary hearing and may also be certified.</p> <p>Definition of Ancillary Charge: Delinquent act, misdemeanor or felony, committed by juvenile as part of a common scheme or plan with a delinquent violent felony.</p>
2	<p>If the juvenile has been detained, the court shall hold a detention hearing as soon as possible, not to exceed seventy-two hours unless the period expires on a Saturday, Sunday or other legal holiday, then the next business day.</p> <p>If detained, a district court form DC-529, DETENTION ORDER/CAPIAS PURSUANT TO § 16.1-247(K), will be filed.</p> <p>It would be unlikely that the juvenile would not be detained if charged with one of the offenses listed. <b>If not detained</b>, it is recommended that the JDR clerk's office set an attorney advisement as soon as possible, and provide proper notice pursuant to <a href="#">Va. Code §§ 16.1-263</a> and <a href="#">16.1-264</a>.</p> <p>This hearing may be held using video conferencing.</p>
3	<p>Enter the petition/warrant in JCMS and schedule for a detention hearing. The case is assigned a "petition" or "charge" number. Index in JCMS using the following codes:</p> <p>Case type: <b>DF</b> delinquent felony</p> <p>Hearing type: <b>DT</b> detention hearing</p> <p><b>If the juvenile is not detained</b>, hearing type <b>AA</b> should be used.</p>

STEP	DESCRIPTION
4	<p>Unless the juvenile has retained counsel and he is present at the detention hearing, the court shall appoint counsel and have him present at the detention pursuant to <a href="#">Va. Code § 16.1-266 (B)</a>.</p> <p>The Commonwealth's Attorney should be notified of the date and time of the detention hearing.</p> <p>A district court form DC-354, CUSTODIAL TRANSPORTATION ORDER should be entered if the juvenile is at the detention home and the hearing is not scheduled using video conferencing.</p> <p>Pursuant to <a href="#">Va. Code § 16.1-266 (C)(3)</a>, a child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive right to counsel only after he consults with an attorney and the court determines that his waiver is free and voluntary. The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case.</p> <p>Orders should be charge specific in case certain offenses are certified and others dismissed or reduced.</p>
5	<p>Detention hearing and attorney advisement conducted.</p> <p>If persons listed on the petition or parents, legal custodian, guardian, or persons standing <i>in loco parentis</i>, have not been served with petition/warrant(s), a summons and a copy of the charging document should be served on them prior to the commencement of the detention hearing.</p>

**5***cont'd*

The district court form DC-513, ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL should be used. At the conclusion of the detention hearing, **if the juvenile remains detained**, the court shall schedule the preliminary hearing within twenty-one days from the date he was first detained pursuant to [Va. Code § 16.1-277.1](#). Parents and witnesses should sign the DC-329, Recognizance to return on the date of the preliminary hearing.

**If not detained**, the Court would have the juvenile sign the district court form DC-329, RECOGNIZANCE for the preliminary hearing date, which must be set within 120 days from the date the petition or warrant was filed with the clerk's office pursuant to [Va. Code § 16.1-277.1](#).

**If detained**, the Court may set a bond amount and bail conditions. This information can be recorded on a DC-569, ORDER or an order provided by the court.

Prior to trial, the bail decision may be appealed to circuit court. (See appendix on "Appeals".)

The court granting or denying such bail, ordering any increase or ordering new or additional sureties may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court. No such stay may be granted after any person who has been granted bail has been released from custody on such bail. [Va. Code § 19.2-124](#)

If held by video conferencing, [Va. Code § 16.1-250](#) applies and requires that at least one of the following parties appears in the jurisdiction in which the offense occurred: the judge, the juvenile, the commonwealth's attorney, the attorney for the child, or the parent(s), guardian, or legal custodian.

A district court form DC-538, PLACEMENT ORDER must be entered by the court to return the juvenile to the detention home if so ordered.

The following motions may be filed in conjunction with the felony proceedings:

- Competency to Stand Trial

STEP	DESCRIPTION
	<ul style="list-style-type: none"> <li>- Motion to Suppress</li> <li>- Motion for Testimony Via Closed-Circuit Television</li> </ul>
6	<p>At least seven days prior to the preliminary hearing, the Clerk's office receives from the Commonwealth Attorney's office a notice of intent to proceed under <a href="#">Va. Code § 16.1-269.1 (C)</a>. It is the Commonwealth Attorney's responsibility to provide the notice by delivery or mail to counsel for the juvenile, or if not represented, the juvenile and a parent, guardian or other person standing <i>in loco parentis</i>. The clerk's office should file the notice with the case papers.</p>
7	<p>If the judge orders the hearing closed, DC-501, ORDER TO CLOSE HEARING should be entered.</p> <p>Preliminary hearing conducted.</p> <p><a href="#">Virginia Code § 16.1-277.1 (D)</a> requires that in cases where the juvenile is detained in a secure facility, the twenty-one day time limitation for the preliminary hearing can only be extended by the court for a reasonable period of time based upon good cause shown, AND that the basis for such extension be recorded in writing and filed with the proceedings.</p> <p>At this hearing or prior to this hearing, the Commonwealth Attorney may elect to withdraw his motion under <a href="#">Va. Code § 16.1-269.1 (C)</a> and proceed under (A), which states the court shall conduct a transfer hearing. If this occurs, please see steps for proceeding under <a href="#">Va. Code § 16.1-269.1 (A)</a>.</p> <p>If the Court finds that probable cause exists, the case is certified, along with any ancillary charges, to the grand jury. DC-520, CERTIFICATION OF JUVENILE FELONY CHARGE is used to record the certification of the charges.</p> <p>The juvenile may waive his right to a preliminary hearing. Form DC-521, <a href="#">WAIVER OF PRELIMINARY HEARING AND CERTIFICATION</a> should be used.</p> <p>If remanded to detention, district court form DC-538, PLACEMENT ORDER should be used.</p> <p>The juvenile may appeal the decision to certify the charges. District court form DC-580, NOTICE OF APPEAL-CRIMINAL should be used.</p>

STEP	DESCRIPTION
	<p>Regardless of the disposition of the case, the fingerprints and photographs are to be forwarded to the CCRE at final disposition</p> <p>Orders should be charge specific in case certain offenses are certified and others dismissed or reduced.</p>

#### A Juvenile Felony when Adjudication Takes Place in J&DR Court.

The following procedures are recommended in processing a juvenile felony when the adjudication takes place in the J&DR Court.

STEP	DESCRIPTION
<b>1</b>	The Clerk's office receives a petition or a warrant alleging a juvenile fourteen or older has committed a felony. CCRE and a fingerprint card may accompany the petition/warrant. These documents should be kept with the file until the case is finalized.
<b>2</b>	<p><b>If the juvenile has been detained</b>, the court shall hold a detention hearing as soon as possible, not to exceed seventy-two hours unless the period expires on a Saturday, Sunday or other legal holiday, then the next business day. This hearing may be held using video conferencing.</p> <p><b>If not detained</b>, it is recommended that the JDR clerk's office set an attorney advisement as soon as possible and provide proper notice pursuant to <a href="#">Va. Code §§ 16.1-263</a> and <a href="#">16.1-264</a>.</p> <p><b>If detained</b>, district court form DC-529, DETENTION ORDER/CAPIAS PURSUANT TO § 16.1-247(K) will be filed.</p>
<b>3</b>	<p>Enter the petition/warrant in JCMS and schedule for a detention hearing, if detained, or an attorney advisement, if not detained. The case is assigned a "petition" or "charge" number.</p> <p>Index in JCMS using the following codes:  Case type: <b>DF</b> delinquent felony  Hearing type: <b>DT</b> detention hearing  <b>AA</b> attorney advisement</p>
<b>4</b>	If scheduling a detention hearing: unless the juvenile has retained counsel and he is present at the detention hearing, the



STEP	DESCRIPTION
	<p>court shall appoint counsel and have him present at the detention pursuant to <a href="#">Va. Code § 16.1-266 (B)</a>. The Commonwealth's Attorney should be notified of the date and time of the detention hearing. District court form DC-354, Custodial Transportation Order should be entered if the juvenile is at the detention home and the hearing is not scheduled using video conferencing.</p> <p>Pursuant to <a href="#">Va. Code § 16.1-266 (C)(3)</a>, a child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive right to counsel only after he consults with an attorney and the court determines that his waiver is free and voluntary.</p> <p>The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case.</p> <p>Orders should be charge specific in case certain offenses are certified and others dismissed or reduced.</p>
5	<p>Detention hearing and attorney advisement conducted.</p> <p>If held by video conferencing, <a href="#">Va. Code § 16.1-250</a> applies and requires that at least one of the following parties appears in the jurisdiction in which the offense occurred: the judge, the juvenile, the commonwealth's attorney, the attorney for the child, or the parent(s), guardian, or legal custodian.</p> <p>If persons listed on the petition or parents, legal custodian, guardian, or persons standing <i>in loco parentis</i>, have not been served with petition/warrant(s), a summons and a copy of the charging document should be served on them prior to the commencement of the detention hearing.</p> <p>District court form DC-513, ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL should be used.</p> <p>At the conclusion of the detention hearing, <b>if the juvenile remains detained</b>, the court shall schedule the adjudicatory hearing within twenty-one days from the date he was first detained pursuant to <a href="#">Va. Code § 16.1-277.1</a>. Parents and</p>

STEP	DESCRIPTION
	<p>witnesses should sign the DC-329, RECOGNIZANCE to return on the date of the preliminary hearing.</p> <p><a href="#">Virginia Code § 16.1-277.1 (D)</a>, requires that in cases where the juvenile is detained in a secure facility, the twenty-one day time limitation for the preliminary hearing can only be extended by the court for a reasonable period of time based upon good cause shown, AND that the basis for such extension be recorded in writing and filed with the proceedings.</p> <p><b>If not detained</b>, the court would have the juvenile sign the district court form DC-329, RECOGNIZANCE for the preliminary hearing date which must be set within 120 days from the date the petition or warrant was filed with the clerk's office pursuant to <a href="#">Va. Code § 16.1-277.1</a>.</p> <p><b>If detained</b>, the Court may set a bond amount and bail conditions. This information can be recorded on district court form DC-569, ORDER.</p> <p>Prior to trial, the bail decision may be appealed to circuit court. (See appendix on "Appeals".)</p> <p>The court granting or denying such bail, ordering any increase or ordering new or additional sureties may, upon appeal thereof, and for good cause shown, stay execution of such order for so long as reasonably practicable for the party to obtain an expedited hearing before the next higher court. No such stay may be granted after any person who has been granted bail has been released from custody on such bail. <a href="#">Va. Code § 19.2-124</a></p> <p>District court form DC-538, PLACEMENT ORDER must be entered by the court to return the juvenile to the detention home if so ordered.</p> <p>The following motions may be filed in conjunction with the felony proceedings:</p> <ul style="list-style-type: none"> <li>– Competency to Stand Trial</li> <li>– Motion to Suppress</li> <li>– Motion for Testimony Via Closed Circuit Television</li> </ul>

STEP	DESCRIPTION
6	<p>Trial on charges held in Juvenile Court. District court form DC-569, ORDER may be used to record findings and orders.</p> <p>The court may adjudicate and move directly to disposition at the same hearing. District court form DC-572, ORDER should be used. Please note that this commitment to DJJ must be reviewed in thirty days.</p> <p>Pursuant to <a href="#">Va. Code § 16.1-278.8</a>, a juvenile can be committed to DJJ only if he is eleven years of age or older and the current offense is (i) an offense that would be a felony if committed by an adult, (ii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense that would be a felony if committed by an adult, or (iii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a part of a common act, transaction or scheme.</p>
7	<p>In the <b>PUB</b> field, an entry of <b>Y</b> indicates that the case is open to the public and an entry of <b>N</b> means the case is not open to the public. When a <b>Y</b> is entered, "<b>PUBLIC</b>" will display on the name index. (Mandatory)</p> <p>If guilty, circuit court form CC-1390, ORDER FOR DNA OR HIV TESTING AND/OR FOR PREPARATION OF REPORTS TO CENTRAL CRIMINAL RECORDS EXCHANGE must be entered ordering a buccal swab be conducted to collect DNA from the juvenile, and fingerprints, if not previously completed. Please see Section IV Post Trial Procedures for fingerprinting and DNA processing instructions. Enter a <b>Y</b> in the <b>DNA</b> field on the H/D Tab. (Mandatory).</p> <p>When adjudicated delinquent of a felony in the JDR court, the juvenile is still treated as a juvenile for subsequent delinquency and traffic matters, however, subsequent charges, if found delinquent or guilty, are open to the public, pursuant to <a href="#">Va. Code § 16.1-305 (B1)</a>.</p> <p>If the petition/warrant is dismissed or not guilty, the fingerprints and photographs are to be destroyed within sixty</p>

STEP	DESCRIPTION
	days after final disposition. If the felony is deferred and dismissed, fingerprints are still required.

### Reporting to U.S. Immigration and Customs Enforcement (ICE)

Pursuant to Va. Code §16.1-309.1 when a juvenile is detained, adjudicated delinquent of a violent juvenile felony, and there is evidence the juvenile is in the United States illegally, the Clerk of the Court shall report this information to the Bureau of Immigration and Customs Enforcement. The court utilizes the DC-569 ADJUDICATION AND DISPOSITION ORDER – DELINQUENCY to facilitate the reporting of this information. The clerk will fax a copy of the DC-511, PETITION and the DC-569, ADJUDICATION AND DISPOSITION ORDER to ICE.

### Time Limitations

#### [Va. Code § 16.1-277.1](#)

There are certain time limitations within which the adjudicatory hearing in a delinquency proceeding must be held.

- Juveniles in secure detention must be released from confinement if no transfer or adjudicatory hearing is held within twenty-one days from the date when the Juvenile is first detained.
- For juveniles not in secure detention or who have been released, an adjudicatory or transfer hearing must be held within 120 days from filing of the petition.

The time limitations above are tolled during any period in which:

- the whereabouts of the child are unknown
- the child has escaped from custody
- the child has failed to appear pursuant to a court order

In addition, the time limits may be extended for a reasonable period for good cause shown if the basis for extension is recorded in writing in the case papers.

### Motions and Other Subsequent Pleadings

After the case has been filed in the clerk's office as described in "Case Initiation", above, all motions and other subsequent pleadings shall be filed directly with the clerk. Clerks may provide information, but not advice, to parties on how to prepare forms used as subsequent pleadings. See [RULES OF SUPREME COURT](#), Part 6, § 1. Unauthorized Practice Rules and Considerations (Introduction, paragraph B (2)).

## Miscellaneous Pre-Trial Proceedings

Some of the additional pre-trial proceedings that may occur in these cases include:

- Motions to suppress illegally seized evidence.
- Sanity at the time of the offense. The Supreme Court of Virginia has held that a juvenile under fourteen years of age did not have either a statutory right or a due process right to assert an insanity defense at the adjudicatory phase of a delinquency proceeding. *Commonwealth v. Chatman*, 260 Va. 562, (November 3, 2000), rev'g. *Chatman v. Commonwealth*, 30 Va. App. 593 (1999).
- Testimony of child witness via closed-circuit television. [Va. Code §§ 18.2-67.2 through 18.2-67.9](#). Request to disclose identity of juvenile charged with certain crimes. [Va. Code § 16.1-309.1](#). See "Confidentiality of Records" later in this chapter.
- Use of a certified facility dog to aid a testifying witness. [Va. Code § 18.2-67.9:1](#).
- Request for pre-trial examination and treatment. [Va. Code § 16.1-275](#). See "Trial Procedures" later in this chapter.
- Motions pursuant to [Va. Code § 22.1-254](#) to require juveniles charged with certain offenses to attend a statutorily authorized alternative educational program.
- Certificates of analysis for drug related cases. See "Adult Criminal Procedures-Certificate of Analysis".
- Notice of, Motion and Order for Chemical Analysis of Alleged Plant Material. See "Adult Criminal Procedures-Notice, Motion and Order for Chemical Analysis of Alleged Plant Material".

These actions are part of the pending case and do not get indexed as subsequent actions.

## Trial Procedures

### Adjudicatory Hearing

For cases heard in court, the clerk's office must perform several functions to assure that cases are processed efficiently. The clerk's office is responsible for assuring that:

- All parties and witnesses involved have been notified of the hearing through the juvenile district court form DC-510, SUMMONS. If a new trial date is set, use district court form DC-329, RECOGNIZANCE (WITNESS), district court form DC-346, NOTICE OF NEW TRIAL DATE or DC-512, NOTICE OF HEARING, as appropriate.
- All other case-related paperwork is complete and accounted and attached to the case including:
  - The original petition and summons or warrant.

- District court form DC-325, [REQUEST FOR WITNESS SUBPOENA](#), and subsequent district court form DC-326, [SUBPOENA FOR WITNESS](#).
- Personal recognizance, bond, or other bail conditions.
- Other pleadings and evidence filed with the court.
- The docket sheet is printed by JCMS; the cases pending are prepared for court.
- Witnesses and other parties are notified of continuances or pre-trial resolution of a case.
- Other court actions are recorded in JCMS and on the case papers:
- Guilty plea to a reduced charge.
- Continuances, including deferred adjudication. [Va. Code §§ 16.1-278.8\(5\)](#) or [16.1-278.9](#) (See “Disposition Hearing” below).

At the commencement of the adjudicatory hearing, the court shall determine whether or not the juvenile is represented by a lawyer (privately retained or court appointed) or has waived counsel. If this matter has not been previously handled in a hearing prior to the adjudicatory hearing, it must be done at the beginning of the adjudicatory hearing.

The juvenile may request a waiver of her/his right to a public hearing. Any hearing in a proceeding where a juvenile fourteen years or older is charged with an offense which would be a felony if committed by an adult shall be open, unless the court closes the hearing for good cause. [Va. Code § 16.1-302 \(C\)](#). If the judge decides to close such a hearing, he must state in writing his reasons for closing the hearing. District court form DC-501, ORDER TO CLOSE HEARING should be used to record this decision.

Once these matters have been completed, the court should commence the proceeding. District court form DC-569, ORDER can be used to memorialize the courts findings and order.

If the child is adjudicated delinquent, the court may order an investigation and the submission of a pre-disposition report using district court form DC-542, ORDER FOR INVESTIGATION AND REPORT. [Va. Code § 16.1-273](#). The investigation shall include a drug screening and may include a social history of the child’s physical, mental and social condition, including an assessment of any affiliation with a youth gang, the child’s personality and the facts and circumstances surrounding the violation of the law.

A drug screening is required in the case of any juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000:

- that would be a felony if committed by an adult, or

- that would be a Class 1 or Class 2 misdemeanor drug offense under Article 1 or Article 1.1 of Chapter 7 of Title 18.2 ([§§ 18.2-247](#) through 265.5) if committed by an adult.

If the drug screening indicates that the juvenile has a substance abuse or dependence problem, a substance abuse counselor employed by the [Department of Juvenile Justice](#) or by the locally operated court services unit shall then complete an assessment.

The court shall, on motion of the Commonwealth's attorney and with the consent of the victim, or may, in its discretion, order a victim impact statement if the court determines that the victim may have suffered significant physical, psychological or economic injury as a result of the violation of law. See [Va. Code § 19.2-299.1](#) for details regarding a victim impact statement.

If the judge found sufficient facts to find the juvenile guilty of certain offenses listed in [Va. Code § 16.1-278.9](#) at clauses (i), (ii), (v), (vi) and (vii) (such as DUI, possession of alcoholic beverages, or unlawful use or possession of a handgun or other described weapons), the judge must defer adjudication and treat the juvenile pursuant to [Va. Code § 16.1-278.9](#), including denial of driving privileges with limited restricted driving privileges using district court form DC-576, DRIVER'S LICENSE DENIAL ORDER (JUVENILE)/DRIVER'S LICENSE SUSPENSION ORDER (UNDERAGE ALCOHOL VIOLATIONS). There is no initial conviction. If the offense involves a DWI and the child was transporting a person seventeen years of age or younger, the court shall impose the additional fine and order community service as provided in [Va. Code § 18.2-270](#).

A violation of driving after illegally consuming alcohol is a Class 1 misdemeanor. Punishment shall include forfeit of license for a period of one year (if the offense was committed before July 1, 2010 or on or after July 1, 2011) or six months (if the offense occurred between July 1, 2010 and June 30, 2011) from the date of conviction and a mandatory minimum fine of \$500 or performance of a mandatory minimum of 50 hours of community service. [Va. Code § 18.2-266.1](#). The juvenile shall be eligible for a restricted license and participation in a VASAP Program. The license forfeiture and any restricted license issued under [Va. Code § 18.2-266.1](#) should be entered on district court form DC-260, DRIVER'S LICENSE FORFEITURE/SUSPENSION AND RESTRICTED DRIVING ORDER.

A juvenile may be detained following adjudication, even if they were not previously detained, if the criteria set forth in subsection A of [Va. Code § 16.1-248.1](#) are met. See criteria above in "Case Initiation, Processing of a Child Taken into Immediate Custody".

Transfer of Venue-Except in custody, visitation and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court may at any time, on its own motion or a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the court receiving the transfer may

deem proper. However, such transfer may occur in delinquency proceedings only after adjudication, which shall include, for the purposes of this section, a finding of facts sufficient to justify a finding of delinquency. [Va. Code § 16.1-243](#).

## Disposition Hearing

A disposition hearing is held separate from and after the adjudicatory hearing in many juvenile cases to allow time for the preparation of reports ordered by the court. See discussion of the reports that may or must be ordered by the court above.

If a child has been adjudicated as being in need of supervision, an evaluation must be conducted by the appropriate public agency using an interdisciplinary team approach, and a report of such evaluation is to be filed with the court. The report is prepared by the court services unit or other entity ordered by the court, is filed with the clerk's office, and is furnished to counsel for the parties involved at least seventy-two hours prior to the hearing.

In some instances, the entity providing the services must calculate a fee for the services based on costs incurred and the child's parents' ability to pay for services. The judge must assess the fees, but is also empowered to waive all or part of the payment of the fees pursuant to [Va. Code § 16.1-274](#) by using district court form DC-533, ASSESSMENT/PAYMENT ORDER. If a guardian *ad litem* has been appointed, the judge must determine if the parents are capable of paying the fee of the guardian *ad litem*. The judge's decision should be noted on district court form DC-533, ASSESSMENT/PAYMENT ORDER. Also, if court-appointed counsel represented the juvenile, the judge should determine if the parents were financially able to retain a lawyer and refused to do so. If so, then the parents should be ordered to pay by using district court form DC-533, ASSESSMENT/ PAYMENT ORDER and if the amounts are unpaid, a separate case should be created for the parents using certified copies of district court form DC-533, ASSESSMENT/PAYMENT ORDER as the initiating case papers.

In addition to those detailed under the discussion of the adjudicatory hearing, two types of examinations pursuant to [Va. Code § 16.1-275](#) between adjudication and disposition are available:

- Physical examination and treatment by a physician or mental examination and treatment by a local mental health center, if there is no appropriate local center, then examination and treatment by a physician or psychiatrist or examination by a clinical psychologist. Upon written recommendation by the person examining the juvenile that adequate evaluation of the juvenile's treatment needs can only be performed in an inpatient hospital setting, the court may order the juvenile



transferred to a state mental hospital for up to ten days for a recommendation for treatment.

- Placement in the custody of the [Department of Juvenile Justice](#) for up to thirty days for diagnostic assessment services if the juvenile would be eligible for commitment pursuant to subdivision A 14 of [Va. Code § 16.1-278.8](#) or [Va. Code § 16.1-285.1](#).
- If a juvenile is held in secure detention after completion of an adjudicatory hearing or transfer hearing, then the juvenile must be released if the disposition hearing is not completed within thirty days from the adjudicatory or transfer hearing.
- The time limitations above are tolled during any period in which:
  - the whereabouts of the child are unknown
  - the child has escaped from custody
  - the child has failed to appear pursuant to a court order.

In addition, the time limits may be extended for a reasonable period for good cause shown if the basis for extension is recorded in writing in the case papers.

The dispositional alternatives in delinquency cases, which are available to the court, depend on the charges, the conditions noted in the social history, physical, and mental examinations, and the statutory provisions. Following conviction, the court may make the following dispositions, pursuant to [Va. Code §§ 16.1-278.8](#) and [16.1-278.9](#) and other various dispositional statutes:

#### Traffic

- In traffic infractions, impose only those penalties that may be imposed on adults for the same offense. [Va. Code § 16.1-278.10](#). This restriction does not bar the [Department of Motor Vehicles](#) from requiring participation in driver improvement programs.
- A violation of a provisional driver's license restriction is a traffic infraction. [Va. Code § 46.2-334.01](#).
- With regard to the restrictions to be imposed upon juvenile drivers, especially those restrictions imposed by DMV, the age of the offender at the date of the violation, not the conviction, determines the applicability of the juvenile restrictions. [Va. Code § 46.2-334.01](#).
- See also section on "Juvenile Traffic Procedures".

## Provision of Services and Treatment

- Order a government agency to render such services to the juvenile that such agency may be required to provide under the law pursuant to [Va. Code § 16.1-278](#).
- Order a parent, guardian, legal custodian or other person, whether or not they reside with the child, to participate in programs, cooperate in treatment and be subject to conditions ordered by the court.
- Require the juvenile to participate in gang-activity prevention program when a juvenile has been found delinquent of:
  - shooting, stabbing cutting, wounding or by any means causing a person bodily injury with the intent to maim, disfigure, disable or kill. [Va. Code § 18.2-51](#).
  - malicious bodily injury to law enforcement officer. [Va. Code § 18.2-51.1](#).
  - malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire. [Va. Code § 18.2-52](#).
  - shooting, stabbing, cutting or wounding a person during the commission or attempted commission of a felony. [Va. Code § 18.2-53](#).
  - bodily injury caused by prisoners, probationers or parolees. [Va. Code § 18.2-55](#).
  - hazing causing bodily injury. [Va. Code § 18.2-56](#).
  - assault and battery. [Va. Code § 18.2-57](#).
  - assault and battery against a law enforcement officer. [Va. Code § 18.2-57](#).
  - assault and battery against a family or household member. [Va. Code § 18.2-57.2](#).
  - entering property of another for purpose of damaging it. [Va. Code § 18.2-121](#).
  - injuries to churches, church property, cemeteries, burial grounds, etc. [Va. Code § 18.2-127](#).
  - trespass upon church or school property. [Va. Code § 18.2-128](#).
  - destroying, defacing, damaging or removing with the intent to steal a monument. [Va. Code § 18.2-137](#).
  - damaging public buildings. [Va. Code § 18.2-138](#).
  - breaking, injuring, defacing, destroying or preventing the operation of a vehicle, aircraft or boat. [Va. Code § 18.2-146](#).

- entering or setting in motion vehicle, aircraft, boat, locomotive or rolling stock of railroad without consent of owner or person in charge. [Va. Code § 18.2-147](#).
  - any violation of a local ordinance adopted pursuant to [Va. Code § 15.2-1812.2](#) (willful and malicious damage or defacement of public facilities).
- Order a first-time drug offender to undergo substance abuse screening, and to submit to periodic drug testing and to undergo an appropriate substance abuse education/treatment program. [Va. Code § 16.1-278.8:01](#).

#### Probation and Deferred Dispositions

- Allow the juvenile to remain with a suitable person under conditions and limitations that the court deems proper.
- Defer disposition for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the judge if the juvenile is of good behavior during the period for which disposition is deferred.
- Defer disposition for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history and place the child on probation on terms and conditions set by the court without the entry of an adjudication of guilt and with the consent of the child and his attorney. Upon fulfillment of the terms and conditions of probation, the court shall discharge the child and dismiss the proceedings against them without an adjudication of guilt.
- Place the juvenile on probation with conditions and limitations as determined by the court. The costs may be imposed where disposition is deferred and the juvenile is placed on probation. Costs are imposed only if a charge is brought on a warrant or summons and not a petition.
- Place the juvenile on probation and order treatment for substance or alcohol abuse in a program licensed by the [Department of Behavioral Health and Developmental Services](#) for the treatment of juveniles for substance abuse, provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to [Va. Code § 16.1-273](#) and the assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a

violent juvenile felony; and (iii) such a facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at thirty-day intervals.

#### Driver's License Actions

- For a second or subsequent violation of the provisional driver's license restrictions, the court may suspend the juvenile's privilege to drive for a period not to exceed six months in addition to any other penalty. [Va. Code § 46.2-334.01](#).
- Suspend the juvenile's driver's license with or without issuance of a restricted license, or impose a curfew on the operation of a motor vehicle (except for traffic offenses, see below, or for violations of [Va. Code §§ 4.1-305; 18.2-248, 18.2-248.1, 18.2-250](#), , [18.2-266](#), or [18.2-268.2](#)). If a restricted license is authorized, the juvenile surrenders the driver's license to the court and the court enters district court form DC-577, DRIVER'S LICENSE SUSPENSION ORDER AND ENTRY INTO SERVICES PROGRAM (JUVENILE). A copy of the order with the license is transmitted to the [Department of Motor Vehicles](#) (DMV) for re-issuance of the license as a restricted license.
- The court shall order that the juvenile be denied a driver's license as provided pursuant to [Va. Code § 16.1-278.9](#) and issue a district court form DC-576, DRIVER'S LICENSE DENIAL ORDER (JUVENILE)/DRIVER'S LICENSE SUSPENSION ORDER (UNDERAGE ALCOHOL VIOLATIONS) if the court finds facts that would justify a finding that the child is delinquent, and the finding involves:
  - a violation of [Va. Code §§ 18.2-248, 18.2-248.1, 18.2-250](#), , [18.2-266](#) or a similar local ordinance or of [Va. Code § 18.2-388](#), or
  - refusal to take a blood or breath test in violation of [Va. Code § 18.2-268.2](#), or
  - the unlawful purchase, possession or consumption of alcohol in violation of [Va. Code § 4.1-305](#), unlawful drinking or possession of alcoholic beverages in or on school grounds in violation of [Va. Code § 4.1-309](#), the unlawful use or possession of a handgun or a "streetsweeper" (or a violation of [Va. Code § 18.2-83](#) (making a bomb threat).

That same statute and order allows the judge to grant a restricted driving permit upon entry into a treatment program except in cases of violation [of Va. Code §§ 18.2-248, 18.2-248.1, 18.2-250](#) or and second or subsequent violations of any of the offenses listed in [Va. Code § 16.1-278.9](#). The

juvenile surrenders his driver's license to the court, which holds such license while the order is in effect. The original of the order is given to the juvenile, and a copy is sent to DMV. This process does not create a suspension of the juvenile's driver's license and is the exclusive remedy for issuance of a restricted driver's license for juveniles for violations involving [Va. Code §§ 18.2-266](#) and [18.2-268.2](#), because the statute authorizes discharge of the juvenile and dismissal of the case without an adjudication of guilt upon fulfillment of all terms and conditions prescribed by the court (unless the violation involved injury or death), thereby not permitting the use of [Va. Code § 18.2-271.1](#) and district court form DC-265, RESTRICTED DRIVER'S LICENSE AND ENTRY INTO ALCOHOL SAFETY ACTION PROGRAM (which requires a finding of guilt) with juveniles.

If the juvenile is less than sixteen years and three months old, then the juvenile may not apply for a driver's license for a period of six months after he reaches the age of sixteen years and three months.

#### Fines, Restitution and Community Service

- Impose a fine not to exceed \$500.
- Order restitution or participation in a "public service project" as defined in [Va. Code § 16.1-278.1](#). The court must require that the juvenile make at least partial restitution or reparation for any property damage, for loss caused by the offense or for actual medical expenses incurred by the victim as a result of the offense when the court finds the juvenile delinquent of:
  - shooting, stabbing cutting, wounding or by any means causing a person bodily injury with the intent to maim, disfigure, disable or kill. [Va. Code § 18.2-51](#).
  - malicious bodily injury to law enforcement officer. [Va. Code § 18.2-51.1](#).
  - malicious bodily injury by means of any caustic substance or agent or use of any explosive or fire. [Va. Code § 18.2-52](#).
  - shooting, stabbing, cutting or wounding a person during the commission or attempted commission of a felony. [Va. Code § 18.2-53](#).
  - bodily injury caused by prisoners, probationers or parolees. [Va. Code § 18.2-55](#).
  - hazing causing bodily injury. [Va. Code § 18.2-56](#).
  - assault and battery. [Va. Code § 18.2-57](#).

- assault and battery against a family or household member. [Va. Code § 18.2-57.2](#).
  - entering property of another for purpose of damaging it. [Va. Code § 18.2-121](#).
  - injuries to churches, church property, cemeteries, burial grounds, etc. [Va. Code § 18.2-127](#).
  - trespass upon church or school property. [Va. Code § 18.2-128](#).
  - destroying, defacing, damaging or removing with the intent to steal a monument. [Va. Code § 18.2-137](#).
  - damaging public buildings. [Va. Code § 18.2-138](#).
  - breaking, injuring, defacing, destroying or preventing the operation of a vehicle, aircraft or boat. [Va. Code § 18.2-146](#).
  - entering or setting in motion vehicle, aircraft, boat, locomotive or rolling stock of railroad without consent of owner or person in charge. [Va. Code § 18.2-147](#).
  - any violation of a local ordinance adopted pursuant to [Va. Code § 15.2-1812.2](#) (willful and malicious damage or defacement of public facilities).
- If the juvenile is required to pay restitution based on being found delinquent for one of these offenses, participation in a community service project must also be ordered.
  - Require the juvenile to participate in a public service project (community service). If the juvenile was found delinquent of one of the offenses for which it is required that the juvenile pay restitution. The juvenile must also be required to participate in a community service project.
  - Pursuant to [§ 19.2-305.1](#), at the time of sentencing, the court shall enter the amount of restitution to be repaid by the juvenile, the date by which all restitution is to be paid, and the terms and conditions of such repayment on a form prescribed by the Office of the Executive Secretary of the Supreme Court of Virginia, namely the Order for Restitution (Juvenile), DC-579. If the attorney for the Commonwealth participated in the prosecution of the juvenile, the attorney for the Commonwealth or his designee shall complete, to the extent possible, all portions of the form excluding the amount of restitution to be repaid by the juvenile and the terms and conditions of such repayment. If the attorney for the Commonwealth did not participate in the prosecution of the juvenile, the court or the clerk shall complete the form. A copy of the form, excluding contact information for the victim, shall be

provided to the juvenile at sentencing. A copy of the form shall be provided to the attorney for the Commonwealth and to the victim, his agent, or his estate upon request and free of charge.

### Transfer of Custody

Transfer custody to a proper person (see [Va. Code § 16.1-278.8 \(13\)\(a\)](#)), welfare agency, or local board of public welfare or social services. Transfers to local boards of public welfare or social services require a finding in the order whether reasonable efforts to prevent removal were made and that continued home placement would be contrary to the child's welfare. The local board shall accept the care and custody of the child if it has been given reasonable notice of the pendency of the case and an opportunity to be heard. In an emergency, the local department of public welfare may be required to accept a child for a period not to exceed 14 days without prior notice or an opportunity to be heard if the judge entering the order describes in the order the emergency and the need for such temporary placement. If the child cannot be dealt with in the child's locality or with the locality's resource, the court may take custody, make other placements, and may enter and enforce a payment order for such placement against the parents or other persons who are legally obligated to provide support and are financially able to contribute support. [Va. Code § 16.1-286](#).

### Commitment and Incarceration

- Commit the juvenile to an appropriate state institution if the mental competency examination indicates that a juvenile is mentally ill or intellectually disabled.
- Only a juvenile who is (i) adjudicated ~~as a delinquent of an act enumerated in subsection B or C of § 16.1-269.1~~ and is 11 years of age or older or (ii) 14 years of age or older may be committed to the Department of Juvenile Justice.
- Place the juvenile in a secure local facility, pursuant to [Va. Code § 16.1-284.1](#):
- Confinement only for up to thirty days inclusive of time served in a detention home or other secure facility if the juvenile:
  - is at least fourteen years old, and
  - has committed an offense for which an adult could be punished by incarceration in jail or the penitentiary, and

The court determines that:

- the juvenile has not been found guilty previously and is not now found guilty of a violent juvenile felony
- the juvenile has not been released from the [Department of Juvenile Justice](#) within the previous eighteen months, and
- the interests of the child and the community require that the child be placed under legal restraint or discipline, and
- other placements will not serve the best interest of the child.

#### Confinement in a Detention Home or Other Secure Facility

for up to six months.

If the period of confinement is to exceed thirty calendar days, and the juvenile is eligible for commitment pursuant to subdivision A 14 of [Va. Code § 16.1-278.8](#), the court shall order the juvenile committed to the [Department of Juvenile Justice](#) but suspend the commitment. As a condition of the suspension, the court shall specify conditions for the completion of one or more community-based or facility-based treatment programs.

for up to twelve months.

If the single offense or multiple offenses, which if committed by an adult would be punishable as a felony or a Class 1 misdemeanor, caused the death of any person, then the court may order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed 12 months from the date the order is entered.

A review hearing must be held at least once during each thirty-day period of confinement. The appearance of the juvenile before the court for a hearing may be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. A facsimile may be served or executed by the officer or person to who sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § [19.2-3.1](#). If it appears at this hearing that the purpose of a confinement has been achieved, the juvenile shall be released on probation but be subject to the order suspending commitment to the



Department. If the juvenile is consistently failing to comply with the conditions set by the court or the facility, the court shall order that the juvenile be committed to the Department.

Commitment to the Department of Juvenile Justice for a determinate period of time stated in the order, pursuant to Va. Code § 16.1-285.1, if the juvenile is **at least fourteen years old**, and the juvenile has been **found guilty of an offense which would be a felony if committed by an adult**, and one of the following applies:

- the juvenile is on parole for an offense which would be a felony if committed by an adult, or
- within the last twelve months the juvenile was committed to the state by court order in a previous delinquency proceeding arising from commission of an offense that would be a felony if committed by an adult, or
- where the felony offense would be punishable by confinement for more than twenty years if committed by an adult or
- the juvenile was previously adjudicated delinquent for a felony punishable for more than twenty years or more if committed by an adult, and
- the court finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, and
- the judge determines that the interests of the juvenile and community require placing the juvenile under legal restraint and discipline and that the juvenile is not amenable to treatment or rehabilitation through other programs or facilities. In making this determination, the judge shall consider the juvenile's age, the present offense(s), the juvenile's history, and the Department's estimated length of stay. [Va. Code § 16.1-285.1 \(B\)](#)

The court shall specify a determinate period of commitment, not to exceed seven years or the juvenile's twenty-first birthday, whichever comes first. The court may also order a period of determinate or indeterminate parole supervision. The total period of commitment and probation cannot exceed seven years or the juvenile's twenty-first birthday, whichever comes first. The Department may petition for an earlier release for good cause. The commitment shall be reviewed, pursuant to petition by the Department, on the second anniversary of the commitment and annually thereafter. [Va. Code § 16.1-285.1 \(F\)](#).

Impose penalties applicable to adults not to exceed twelve months in jail if the juvenile is over eighteen at time of sentencing but was a juvenile at the time that the offense(s) was committed and the offense(s) would be a crime if committed by an adult.

#### Contempt Penalties

Take enforcement action permitted by [Va. Code § 16.1-292](#) for violation of court orders, including punishing summarily for contempt with confinement of juveniles in a juvenile secure facility (or, if the juvenile is eighteen years of age or older when the order of disposition is entered, in jail) for up to ten consecutive days. In contempt cases where the underlying order involved a child in need of services or a child in need of supervision, confinement of juveniles shall not exceed seven days.

**NOTE:** Some of the dispositions provided above can or should be ordered in conjunction with other dispositions in the list.

#### Appeals

Any final order or conviction of the juvenile and domestic relations district court affecting the rights or interests of any person coming within its jurisdiction or any order entered under [Va. Code § 16.1-292 \(E\)](#) may be appealed to the circuit court within ten days of entry of the conviction. [Va. Code § 16.1-296](#).

No costs, taxes or fees are to be assessed on appeals in delinquency cases because [Va. Code § 16.1-296](#) only permits such assessments if a trial fee could have been assessed in the juvenile and domestic relations district court and no trial fees in delinquency cases are statutorily provided.

When a case is transferred to another jurisdiction for disposition and an appeal is noted, the appeal is noted in the court which disposed of the case. The case is then sent back to the circuit court where the case was initiated.

For step-by-step procedures for the appeal process, see the “Appeals” appendix.

#### Post-Trial Actions When a Juvenile Committed to the Department of Juvenile Justice

[Va. Code §§ 16.1-293, 16.1-290](#)

When a court commits a juvenile to the [Department of Juvenile Justice](#), the court services unit shall maintain contact with the juvenile. Juveniles paroled after having been committed to the Department are returned to the custody of the local court service unit. Placement in foster care paid by the [Department of Juvenile Justice](#) while on parole can

only be ordered by the court after an investigation and a finding that the child should not be returned home and that local funds for foster care are not available.

In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department and has not attained the age of eighteen years, the local department of social services shall resume custody upon the person's release from commitment, unless an alternative arrangement for the custody of the person has been made and communicated in writing to the Department. The court services unit shall consult with the local department of social services four weeks prior to the person's release from commitment on parole supervision concerning return of the person to the locality and the placement of the person. The court services unit will be responsible for supervising the person's terms and conditions of parole.

When a person is ordered to participate in therapy, counseling or similar continuing programs, a motion may be filed with the court to reconsider the order or the terms or conditions of participation at any time after entry of the order. The motion must be heard within thirty days, and the order disposing of the motion shall be deemed to be a final order for appeal purposes.

Whenever a juvenile is placed in temporary custody of the Department pursuant to [Va. Code §16.1-278.8 \(A\)\(4a\)](#) or committed to the Department pursuant to [Va. Code § 16.1-278.8 \(A\)\(14\)](#) or (17), the Department shall apply for child support with the Department of Social Services. The parents shall be responsible for child support from the date the Department receives the juvenile. If the parent fails or refuses to pay the support, the court may proceed against them for contempt.

## Post-Trial Procedures

As juvenile cases are completed in juvenile and domestic relations district court, there are several post-trial procedures that must be completed to assure that cases are properly recorded and disposed of. Thus, the clerk's office will:

- Ensure that the disposition is recorded in the JCMS system and filed with the case papers.
- Collect fines and court costs ordered by the court, if any.
- Scan and assign all court documents to the case in the court's records management system.
- Send district court form DC-533, ASSESSMENT/PAYMENT ORDER if parents are ordered to pay for court-appointed attorney or investigative services.
- Prepare the court order (if a separate order is used) as per the court's instructions and attach to appropriate case(s). Do not batch different children's names on the order.

- Prepare the district court form DC-572, JUVENILE COMMITMENT ORDER if the juvenile is to be committed to the [Department of Juvenile Justice](#) or a local facility.
- Prepare CCRE report and order for withdrawal of DNA sample for analysis where applicable. A juvenile convicted of a felony or adjudicated delinquent on the basis of an act which would be a felony if committed by an adult shall have his blood, saliva or tissue taken for DNA analysis provided the juvenile was 14 years of age or older at the time of the commission of the offense. Send copies of the juvenile's fingerprints and a report of the disposition to Central Criminal Records Exchange if the juvenile is adjudicated delinquent or found guilty of an offense that would be a felony if committed by an adult or any other offense for which a report to the CCRE is required.

**NOTE:** An order to collect DNA should not be entered upon the conviction or deferral of juvenile misdemeanor cases.

- Prepare district court form DC-573, ORDER FOR CUSTODY/PARENTING TIME/VISITATION ORDER GRANTED TO INDIVIDUAL(S) if the custody of the child was in dispute.
- Prepare district court form DC-628, ORDER FOR SUPPORT (CIVIL) if the court orders the parents to pay for child support during court-ordered commitment.
- Prepare bond forfeiture for those bonded defendants who failed to appear in court.
- Refund appearance bonds to those bonded defendants who appeared in court.
- Prepare district court form DC-352, COMMITMENT ORDER where applicable, and forward to jail.
- Complete district court form DC-538, PLACEMENT ORDER for juveniles placed in shelter care or a detention facility pending transfer or as ordered by the court.
- Prepare district court form DC-539, RELEASE ORDER for juveniles to be released from shelter care or a detention facility as ordered by the court.
- Send appealed case files to circuit court.

If no appeal is noted, the clerk shall provide written notice of a conviction for those offenses specified in [Va. Code § 16.1-305.1](#) to the superintendent of the school division in which the juvenile was enrolled within fifteen days of the expiration of the appeal period. For dispositions other than conviction, deferred disposition, nolle prosequi, withdrawal, or dismissal, the court shall provide written notice to the superintendent of the school division in which the juvenile was enrolled within fifteen days of such action.

## Bond Forfeitures

See Chapter "Miscellaneous-Bond Forfeiture"

The same procedure used to forfeit bonds in adult criminal cases ([Va. Code § 19.2-143](#)) is also used in forfeiting bonds in juvenile cases.

## Payment of Counsel

If an attorney is appointed to represent a juvenile at a detention hearing, however, is not appointed to represent the juvenile for the preliminary, transfer or adjudication hearing, he may be paid for representing the juvenile at the detention hearing, an amount not to exceed \$680.00. The district court form DC-40, List of Allowances should indicate that the appointment was pursuant to [Va. Code § 16.1-266 \(B\)](#).

Likewise, if an attorney is appointed to on a juvenile felony charge and the juvenile chooses to waive counsel, the attorney may be paid for representing the juvenile at the detention/advisement hearing, an amount not to exceed \$680.00. The district court form DC-40, LIST OF ALLOWANCES should indicate that the appointment was pursuant to [Va. Code § 16.1-266 \(C\)\(3\)](#).

The DC-40, LIST OF ALLOWANCES should be filed with the court for payment of services regarding representation of a juvenile for the preliminary, transfer or adjudication hearing in the JDR Court. The maximum allowed is \$680.00 per charge. The Judge may enter district court form DC-533, ASSESSMENT/PAYMENT ORDER requiring the parents pay attorney fees.

## Violations of Court Orders

In addition to or instead of revoking a suspended sentence upon violation of the terms of the dispositional order, the court may proceed by a show cause proceeding, by contempt, or by both. [Va. Code § 16.1-292](#). For purposes of contempt proceedings, a juvenile and an adult are treated the same except that a juvenile can only be sentenced for contempt to a secure juvenile facility, not a jail, except in certain situations, for up to seven days per offense and may be sentenced otherwise for no more than he could have been sentenced originally for the delinquent offense. Special provisions apply to the dispositional alternatives when the underlying order involves a child in need of services or a child in need of supervision.

## CCRE/Fingerprinting

[Virginia Code § 16.1-299](#). All duly constituted police authorities having the power of arrest shall take fingerprints and photographs of any juvenile who is taken into custody and charged with a delinquent act at arrest for which, if committed by an adult, is required to be reported to the Central Criminal Records Exchange (CCRE), pursuant to subsection A of [Va. Code § 19.2-390](#).

Preparation of fingerprint cards and CCRE's is the responsibility of the chief law enforcement officer or designee, who may be the arresting officer. It is the court's responsibility to inform the chief law enforcement officer, upon conviction of applicable charges, that fingerprinting and photographs are required.

Case dispositions for juveniles will electronically transmit to CCRE upon final disposition, meaning case closed in JCMS. The program will automatically transmit cases that are reportable using the case type, code section and/or final disposition as the determining factors.

Juvenile delinquency dispositions should be reported to the CCRE in the following instances:

- Adjudications of delinquency on all felonies (**regardless of the age**), treason, Title 54.1 violations punishable as a misdemeanor, and any misdemeanors punishable by confinement in jail under Title 18.2, Title 19.2 or similar local ordinances. Exception is: family desertion or nonsupport [Va. Code § 20-61](#).
- Charges, **regardless of disposition**, which are defined as violent juvenile felonies for **minors 14 and older** in subsection B and C of [Va. Code § 16.1-269.1](#) and ancillary charges are reported to CCRE. Violent juvenile felonies are:

<a href="#">§ 18.2-31</a>	Capital murder defined; punishment.
<a href="#">§ 18.2-32</a>	First and second-degree murder defined; punishment.
<a href="#">§ 18.2-33</a>	Felony homicide defined; punishment.
<a href="#">§ 18.2-40</a>	Lynching deemed murder.
<a href="#">§ 18.2-41</a>	Shooting, stabbing, etc., with intent to maim, kill, etc., by mob.
<a href="#">§ 18.2-48</a>	Abduction with intent to extort money or for immoral purpose.
<a href="#">§ 18.2-51.1</a>	Malicious bodily injury to law-enforcement officers, firefighters, search and rescue personnel
<a href="#">§ 18.2-51</a>	Shooting, stabbing, etc., with intent to maim, kill, etc.
<a href="#">§ 18.2-51.2</a>	Aggravated malicious wounding; penalty.
<a href="#">§ 18.2-54.1</a>	Attempts to poison.
<a href="#">§ 18.2-54.2</a>	Adulteration of food, drink, drugs, cosmetics, etc.; penalty.
<a href="#">§ 18.2-58.1</a>	Carjacking; penalty.
<a href="#">§ 18.2-58</a>	Robbery.
<a href="#">§ 18.2-61</a>	Rape.
<a href="#">§ 18.2-67.1</a>	Forcible sodomy.
<a href="#">§ 18.2-67.2</a>	Object sexual penetration; penalty.

“Ancillary crime” or “ancillary charge” means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which

constitutes a part of a scheme or plan with, a delinquent act that would be a felony if committed by an adult.

- Felonies in which deferred disposition is ordered and the charges are later dismissed.

With the Juvenile State Police Interface, explained in more detail in the JCMS User's Guide, the court does not have to mail the CCRE form on cases that successfully transmit to state police, however, the fingerprint card will be received by the clerk's office and must be mailed to the state police if the charge is reportable to CCRE. The fingerprint card is mailed upon final disposition and should only list the charges that are required to be reported.

- Forms

CC-1390	ORDER FOR DNA OR HIV TESTING AND/OR FOR PREPARATION OF REPORTS TO CCRE
SP 180	MANUAL FINGERPRINT FORM
SP 222	AUTOMATED FINGERPRINT FORM
DC-360	SHOW CAUSE SUMMONS
DC-511	PETITION

- References

DMV/State Pre-Payable Table

#### Clerk's Procedure for CCRE Received Without Documents

The following procedures are recommended when the fingerprint form is received without charging documents.

- All copies of the fingerprints, and all photographs shall be destroyed by the clerk sixty days after fingerprints were taken if a petition or warrant is not filed against the juvenile pursuant to [Va. Code § 19.2-390](#). The court should enter an order directing the law enforcement agency to destroy their fingerprint card and photographs related to the charge. The clerk destroys the fingerprint card received by the court.
- To prevent destruction of any fingerprint forms and/or photographs that may have been sent in error to the court, the clerk may choose to return the form and/or photographs to the issuing agency for corrected distribution

## Clerk's Procedure for CCRE Received at the Time of Charging Documents

The following procedures are recommended when the fingerprint form is received at the time of the charging documents.

STEP	DESCRIPTION
1	If fingerprint form is attached to the charging document, enter fingerprint form number in JCMS in <b>DOCUMENT NUMBER</b> field upon data entry of charge.
2	<p>Upon adjudication, for a juvenile whose case is being transferred to another court for disposition, the clerk enters the appropriate disposition code, and forwards the fingerprint form with the case papers.</p> <p>Clerk enters <b>TR</b> for transfers to another court or <b>TA</b> for cases where the juvenile is fourteen years or older charged with an offense that if charged as an adult would be considered a felony and is transferred to Circuit Court.</p>
3	<p>If reportable, after fifteen days, the dispositional information will electronically be sent to state police. (<i>CASES WITH FINAL DISPOSITION OF TR, FF, TA OR AN EXISTING APPEAL DATE WILL NOT TRANSMIT TO CCRE.</i>) The fingerprint card must be mailed to CCRE.</p> <p>Upon a finding of not guilty or in a case resulting in a disposition for a charge in which fingerprints are not required, the clerk completes the disposition code, and court will destroy all court copies of the fingerprint form within six months of disposition of case pursuant to <a href="#">Va. Code § 19.2-390</a>. The court should enter an order directing the law enforcement agency to destroy their fingerprint card and photographs related to the charge. The clerk destroys the fingerprint card received by the court.</p> <p>For finalized cases transferred as part of disposition to another court, clerk shall forward fingerprint card as part of the case papers. The court receiving the transferred file shall forward the fingerprint card to CCRE, at the electronic disposition will transmit to CCRE from their court.</p>
4	For a juvenile case that has a "fugitive" status, the clerk enters a <b>FF</b> disposition code, and retains the fingerprint form with the case papers.



## Clerk's Procedure for CCRE not Received with Documents

The following procedures are recommended when the fingerprint form is not received at the time of the charging documents.

**NOTE:** In cases where the **DOCUMENT NUMBER** is required for case entry, the clerk may check the **DOCUMENT NUMBER** Unknown checkbox and enter the **AGENCY NUMBER** until the fingerprint form is received.

STEP	DESCRIPTION
<b>1</b>	Upon adjudication of the charge, the clerk may issue the CC-1390, ORDER FOR DNA OR HIV TESTING AND/OR FOR PREPARATION OF REPORTS TO CCRE to facilitate fingerprinting and photographing of juveniles.
<b>2</b>	<p>Upon receipt of the CC-1390, ORDER FOR DNA OR HIV TESTING AND/OR FOR PREPARATION OF REPORTS TO CCRE showing compliance with court order, the clerk may file form with case papers. Upon notice of noncompliance with court order, the clerk shall notify the judge for the required action requested upon the Court's motion.</p> <p>Clerk may issue DC-360, SHOW CAUSE SUMMONS or Court Service Unit may file DC-511, PETITION for failure to comply with or violation of court order based on Judges decision at notification of noncompliance.</p>
<b>3</b>	<p>Upon adjudication, for a juvenile whose case is being transferred to another court for disposition, the clerk enters the appropriate disposition code, and forwards the fingerprint form with the case papers.</p> <p>Clerk enters <b>TR</b> for transfers to another court or <b>TA</b> for cases where the juvenile is fourteen years or older charged with an offense that if charged as an adult would be considered a felony and is transferred to Circuit Court.</p> <p>For finalized cases transferred as part of disposition to another court, clerk shall complete and forward fingerprint form as part of the case papers. The court receiving the transferred file shall forward the fingerprint form to CCRE, as the electronic disposition will transmit to CCRE from their court.</p>
<b>4</b>	If reportable, after fifteen days, the dispositional information will electronically be sent to state police. <i>(CASES WITH FINAL DISPOSITION OF TR, FF, TA OR AN EXISTING APPEAL DATE WILL</i>

STEP	DESCRIPTION
	<p><i>NOT TRANSMIT TO CCRE.</i>) The fingerprint card must be mailed to CCRE, if reportable.</p> <p>Retain SP 180 in case file.</p> <p>Upon a finding of not guilty or in any case resulting in a disposition for a charge for which fingerprints are not required, the clerk completes the disposition code and the court will destroy all court copies of the fingerprint form within six months of disposition of case pursuant to <a href="#">Va. Code § 19.2-390</a>. The court should enter an order directing the law enforcement agency to destroy their fingerprint card and photographs related to the charge.</p> <p>The Clerk destroys the fingerprint card received by the court.</p>
5	For a juvenile case that has a “fugitive” status, the clerk enters <b>FF</b> as the disposition code, and retains the fingerprint form with the case papers.
6	If fingerprint form is received in less than twenty days after disposition, the clerk shall enter the <b>DOC#</b> in JCMS, and the information will transmit electronically. If the fingerprint form is received after twenty days from disposition, the clerk shall enter the <b>DOC#</b> and forward the fingerprint form manually to the CCRE.

### CCRE Report Review Procedures

Each Friday, the Supreme Court of Virginia complies and extracts eligible records and electronically processes them for the Interface. Reports are generated and placed in the courts print file. See the JCMS User’s Guide, Virginia Department of State Police Interface for more information regarding the State Police Report.

### References

<a href="#">§ 16.1-299</a>	Fingerprints and photographs of juveniles
<a href="#">§ 18.2-119</a>	Trespass
<a href="#">§ 18.2-415</a>	Disorderly conduct
<a href="#">§ 18.2-390</a>	Reports to be made by local law-enforcement officers
<a href="#">§ 19.2-391</a>	When authorized to take prints
<a href="#">§ 19.2-392.01</a>	Certain misdemeanor cases
<a href="#">§ 20-61</a>	Family desertion and nonsupport

## **Petition for Payment Agreement For Fines and Costs or Request to Modify Existing Agreement**

The court shall offer any defendant who is unable to pay in full the fines and costs within 180 days of sentencing the opportunity to enter into a deferred, modified deferred or installment payment agreement.

In any case in which a defendant owes fines and costs and where the defendant's sole financial resource is a Social Security benefit or Supplemental Security Income, then such defendant shall be exempt from making payments until such time that such defendant has a resource other than a Social Security benefit or Supplemental Security Income. The defendant will need to complete the DC-210, FINES AND COSTS PAYMENT AGREEMENT/ACKNOWLEDGMENT OF DRIVER'S LICENSE STATUS, and the individual account updated in FAS to reflect the SSS/SSR status.

The court shall not deny a defendant the opportunity to enter into a payment agreement solely (i) because of the category of offense for which the defendant was convicted or found not innocent, (ii) because of the total amount of all fines and costs, (iii) because the defendant previously defaulted under the terms of a payment agreement, (iv) because the fines and costs have been referred for collections pursuant to [§ 19.2-349](#), (v) because the defendant has not established a payment history or (vi) because the defendant is eligible for a restricted driver's license under subsection E of [§ 46.2-395](#).

In determining the length of time to pay under a deferred, modified deferred, or installment payment agreement and the amount of the payments, a court shall take into account the defendant's financial resources and obligations, including any fines and costs owed by the defendant in other courts. In assessing the defendant's ability to pay, the court shall use a written financial statement, DC-211, PETITION FOR PAYMENT AGREEMENT FOR FINES AND COSTS OR REQUEST TO MODIFY EXISTING AGREEMENT, setting forth the defendant's financial resources and obligations or conduct an oral examination of the defendant to determine his financial resources and obligations. The length of a payment agreement and the amount of the payments shall be reasonable in light of the defendant's financial resources and obligations and shall not be based solely on the amount of fines and costs. The court may offer a payment agreement combining an initial period during which no payment of fines and costs is required followed by a period of installment payments.

A court may not require a down payment as a condition of a defendant entering a deferred, modified deferred, or installment payment agreement.

All fines and costs that a defendant owes for all cases in any single court may be incorporated into one payment agreement, unless otherwise ordered by the court in specific cases. A payment agreement shall include only those outstanding fines and costs for which the limitations period set forth in [§ 19.2-341](#) has not run.

At any time during the duration of a payment agreement, the defendant may request a modification of the agreement in writing on a form provided by the Executive Secretary of the Supreme Court, and the court may grant such modification based on a good faith showing of need.

A court shall consider a request by a defendant who has defaulted on a payment agreement to enter into a subsequent payment agreement. In determining whether to approve the request for a subsequent payment agreement, the court shall consider any change in the defendant's circumstances. The court may require a down payment to enter the subsequent payment plan. The down payment shall not exceed 10% of fines and costs owed when the amount due is \$500.00 or less. If the fines and costs owed are more than \$500.00, 5% of such amount or \$50.00, whichever is greater may be required as down payment.

The filing of a DC-211, PETITION FOR PAYMENT AGREEMENT FOR FINES AND COSTS OR REQUEST TO MODIFY EXISTING AGREEMENT does not require a hearing by statute. The court should not index the motion. If local policy requires a hearing for initial or additional time-to-pay, the following apply:

- If the case is still pending, enter a hearing with the hearing type of 'MO- Motion'.
- If the case is finalized, use an **AH** hearing type.

## Constitutionality of Statutes

### [Va. Code § 16.1-131.1](#)

In any criminal or traffic case in a court not of record, if the court rules that a statute or local ordinance is unconstitutional, it shall upon motion of the Commonwealth, stay the proceedings and issue a written statement of its findings of law and relevant facts, if any, in support of its ruling, and shall transmit the case, together with all papers, documents and evidence connected therewith, to the circuit court for a determination of constitutionality. If the Circuit court rules that the statute or local ordinance is constitutional; it shall remand the case to the court not of record for trial.

The Clerk should update the case using **F** as hearing result and **TR** as final disposition. In remarks it is suggested to put "appealed pursuant to [Va. Code § 16.1-131.1](#). DO NOT PLACE A DATE IN THE **APPEAL DATE** FIELD. Keep a copy of the original summons or warrant. Immediately transfer original to Circuit court along with DC-322, ORDER - TRANSFER OF JURISDICTION.

## Registration on the Sex Offender and Crimes against Minors Registry

### [Va. Code § 9.01-902](#)

Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent on or after July 1, 2005, of any offense for which registration is required, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration. In making its determination, the court shall consider all of the following factors that are relevant to the case: (i) the degree to which the delinquent act was committed with the use of force, threat or intimidation, (ii) the age and maturity of the complaining witness, (iii) the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case. The attorney for the Commonwealth may file such a motion at any time during which the offender is within the jurisdiction of the court for the offense that is the basis for such motion. Prior to any hearing on such motion, the court shall appoint a qualified and competent attorney-at-law to represent the offender unless an attorney has been retained and appears on behalf of the offender or counsel has already been appointed.

## Miscellaneous Procedures

### Possession of Marijuana

The Juvenile and Domestic Relations District Court has the authority to punish juveniles who possess marijuana pursuant to Va. Code § [4.1-1105.1](#) with a civil penalty up to \$25.00 penalty, however, the court may also enter a disposition pursuant to Va. Code § 16.1-278.9.

The following procedures are recommended in processing a juvenile simple possession of marijuana case in the Juvenile and Domestic Relations District Court.

STEP	DESCRIPTION
1	The Clerk's office receives a summons. Summons should be stamped with date received.
2	Enter the summons as new case number in the delinquency division of the JCMS and schedule adjudication hearing. Index in JCMS with the following codes: Case Type: <b>CI</b> – Civil Violation Hearing Type: <b>AJ</b> – adjudication

STEP	DESCRIPTION
3	<p>At the adjudicatory If the juvenile is found not guilty, finalize the case in JCMS. Case finalized as <b>NG</b> – not guilty.</p> <ul style="list-style-type: none"> <li>- If the juvenile is found guilty without further disposition, finalize the case in JCMS. Case finalized as <b>G</b> – guilty.</li> </ul>
4	<p>If the Court finds defers the matter, continue for a period of time to be set by the Court.</p> <p>The clerk should place a <b>DD</b> in the hearing result field and a <b>DS</b> in the new hearing type with the deferred disposition date.</p> <p>If the court so orders, the clerk shall complete the district court form DC-576, DRIVER'S LICENSE DENIAL ORDER (JUVENILE)/DRIVER'S SUSPENSION ORDER (UNDERAGE ALCOHOL VIOLATIONS) <b>for the OL suspension. If the clerk's office enters the suspension time into JCMS, place an M</b> in the DMV field to indicate manual transmission of the suspension to DMV. A copy of the district court form DC-576 is sent to DMV. Juvenile may be required to undergo a substance abuse assessment pursuant to <a href="#">Va. Code § 18.2-251.01</a> or <a href="#">Va. Code § 19.2-299.2</a> as appropriate, and enter a treatment and/or education program, if available, such as in the opinion of the court, may be best suited to the needs of the accused based upon consideration of the substance abuse assessment as well as license suspension. (District JCMS Forms 200 Series - Restricted Driver's License Form)</p>
5	<p>The Court shall review the case on the deferred disposition review date. If there have been no further charges, the case shall be dismissed. If there have been further charges, the case is reset on the docket, and the juvenile is subpoenaed back to court. If the matter is reset, please refer to the steps above for final disposition, but the OL suspension is not ordered again.</p>

### Diversion –Underage Possession of Alcohol

[Virginia Code § 16.1-260](#) provides that when a violation of [§4.1-305](#) is charged by summons, the juvenile shall be entitled to have the charge referred to intake for consideration of informal proceedings pursuant to subsection B, provided such right is exercised by written notification to the clerk not later than 10 days prior to trial. At the time such summons alleging a violation of [§4.1-305](#) is served, the officer shall also serve

upon the juvenile written notice of the right to have the charge referred to intake on district court form DC-524, NOTICE OF RIGHT TO CONSIDERATION OF DIVERSION make return of such service to the court. If the officer fails to make such service or return, the court shall dismiss the summons without prejudice.

#### References

<a href="#"><u>§4.1-305</u></a>	Underage possession of alcohol
<a href="#"><u>§ 16.1-260</u></a>	Diversion provisions
<a href="#"><u>§ 16.1-277.1</u></a>	Time limitation
<a href="#"><u>§ 16.1-278.9</u></a>	Delinquent children; loss of driving privileges for alcohol, firearm and drug offenses; truancy
<a href="#"><u>§ 18.2-251</u></a>	Persons charged with first offense may be placed on probation; conditions; screening, assessment and education programs; drug tests; costs and fees; violations; discharge.