

A Parent's Guide to Juvenile Transfer in Virginia



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Butler Family Fund

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Introduction

In Virginia, a child at least 14 years old who is charged with certain serious felonies may be prosecuted in the adult courts. This is called *juvenile transfer*. Transfer brings a different set of rights, restrictions and procedures than in the juvenile system.

This is very serious. Adult courts and adult prisons are no place for children. Youth who are tried and sentenced in the adult system may live their daily lives among adult criminals. While not perfect, the juvenile system provides kids with treatment and rehabilitation. The juvenile system offers educational and mental health services suited to a child's age and experience.

This guide aims to assist you in this stressful and complicated process. You are your child's best advocate. We hope to answer your questions and help you take control of the process for your child. You can be an effective advocate by using the information in the Guide. It's very important to prepare for the hearings and to support your child and your child's attorney.

The chapters trace a child's path through the justice system and offer information and suggestions at each stage. We provide tools such as blank pages for notes, detachable cards, and folder pockets, so that you may use this manual as more than just a reference. Terms appearing in **bold type** are defined in our Glossary section. Your presence, support, and involvement will be invaluable to your child's future, no matter the outcome of the current situation.

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Players in the Juvenile System

Police: During the investigation of an offense, police officers will question your child. Your child has the right to remain silent during this time, and it's best to consult with an attorney before encouraging your child to answer potentially incriminating questions.

Intake Officer: The intake officer works in the Court Service Unit. He or she is often the first person you will talk with after your child is arrested. Intake officers play an important role because they will decide whether there is enough evidence to establish that a crime was committed and that your child may have been involved. This is called **probable cause**. If the intake officer decides that there is probable cause, he or she must decide whether to retain or release your child. In serious crimes, it is very likely that your child will be detained in a juvenile detention facility until the next day that the court is able to hear the case. In less serious matters, the intake officer will often release your child to you and ask that you bring your child in for the next court hearing.

Judge: During your child's experience with the justice system, your child may appear before several judges, depending on the charges filed. Most commonly, a juvenile will first appear before a judge in the Juvenile and Domestic Relations Court. If your child is transferred to the adult system, he or she will appear before a circuit court judge, who will most likely preside over the case after that.

Court Services Unit Staff: Each Juvenile and Domestic Relations district court has a court service unit attached to it. The unit consists of intake officers and probation officers who will work with you and your child at different stages of the juvenile justice process. It is important to cooperate with the staff as they have the responsibility of getting the most accurate information to the judge and making recommendations.

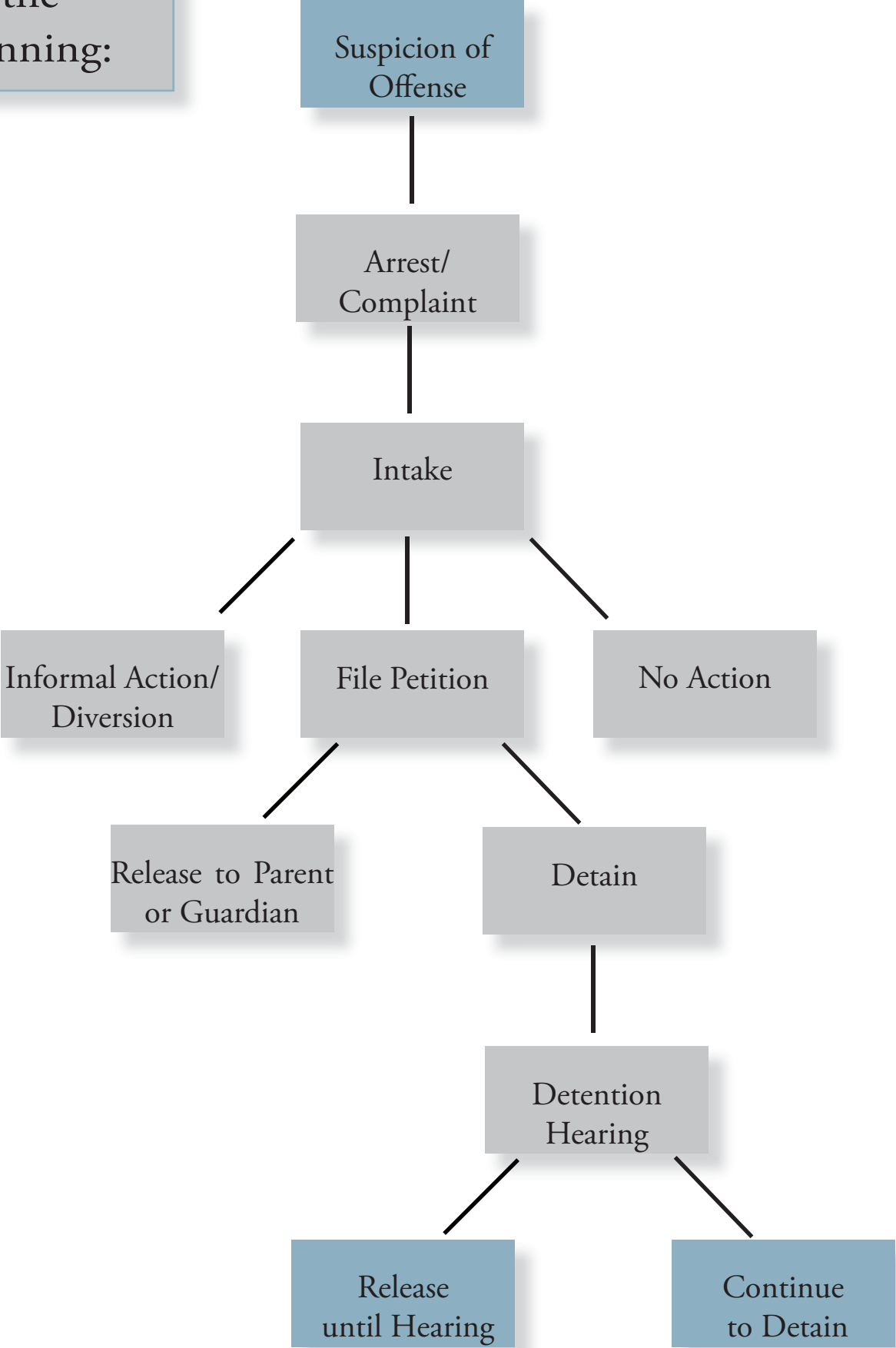
Probation/Parole Officer: The probation officer may write a report to the juvenile court about your child and include school and home information. In a transfer hearing, where the court is deciding whether to transfer your child to the adult system, the probation officer will make a recommendation on whether your child should be treated as a juvenile or transferred to the adult court. This is an important report, as the probation officer can recommend anything from probation supervision to commitment to a long-term juvenile facility. In most cases, your child will be assigned a probation officer after the trial if your child is found guilty of the charges. The probation officer will also make a recommendation to the juvenile court judge about your child's sentence. If your child is placed on probation, the probation officer is responsible for arranging appropriate treatment services and community programs, and monitoring how both of you are following through.

Commonwealth's Attorney: In Virginia, the prosecuting attorney is called a "Commonwealth's attorney." In transfer cases, the Commonwealth's attorney has a major role in determining whether your child will be prosecuted as an adult.

Public Defender/Court-Appointed Attorney: If your child is arrested, or if charges are filed, the court will appoint a public defender or other attorney to represent him or her if you cannot afford a private lawyer. As a parent, you should encourage your child to be honest with the lawyer. Any information your child gives will be confidential and will be a secret between the lawyer and your child. Your child's lawyer is not required to share this information with you as the parent.

Victim-Witness Advocate: If your child is charged with a crime against another person, you may see a victim-witness advocate in the courtroom along with the person who is alleging the charges against your child. The advocate's job is to counsel and support this person throughout the process. The advocate works with the Commonwealth's Attorney and law enforcement officers to help this person. The advocate will also help this person to write a "victim impact statement," which may work against your child during detention, transfer, and sentencing hearings.

In the Beginning:



How does a child come into contact with the court system?

- ◇ If the first contact is with the police, an officer can choose either to counsel and then release the child, or to arrest the child. The seriousness of the crime and the child's prior charges are important factors in the officer's decision.
- ◇ If a parent, agency or other citizen files the complaint, then the issue will go to **intake**.

What is Intake?

The **intake officer** decides whether there is enough evidence to suggest that a child has violated the law. The officer can take no action and release the child or proceed with an informal action, such as counseling, community service or shelter care (also called **diversion**), or file a **petition**. A petition is a legal report of what the child is said to have done and is used to bring the child into the court process.

- ◇ Occasionally the police officer or complainant disagrees with the diversion decision and may appeal the decision to the **magistrate**. The magistrate must certify the charge, and the case is brought to court.

After a petition is filed, what happens?

Once a petition has been filed, the intake officer decides whether to detain the child. An important factor in this decision is whether the child is a risk to himself or herself, a risk to the community, or an escape risk.

- ◇ If the intake officer decides to detain the child, then a detention hearing must be held in the Juvenile and Domestic Relations Court within 72 hours. The judge will examine the charges, advise the child of his or her rights, and determine if the child will be further detained.
- ◇ If your child is charged with a serious felony that could lead to transfer to adult court, a good possibility exists that your child will be held in detention until the next hearing.

Does my child's school have to be notified of the charges?

Virginia law says that if a petition is filed against a child based on the following crimes, the intake officer must notify the superintendent of the school district.

- ◇ An offense involving a firearm
- ◇ Homicide
- ◇ Felonious assault
- ◇ Bodily wounding
- ◇ Criminal sexual assault
- ◇ Certain offenses related to the manufacture, sale, distribution or possession of illegal drugs
- ◇ Arson and related crimes
- ◇ Burglary and related crimes
- ◇ Robbery
- ◇ Certain criminal gang-related offenses, including recruitment

If your child has been charged with one of these, the local school board can expel your child from school. If your child is released from detention, you can ask the school to reconsider the expulsion decision.

What happens at the Detention Hearing?

This hearing allows a judge to examine the charges against your child, and decide whether he or she should be held in a juvenile facility, placed in an alternative facility such as a halfway house, sent home or placed in the care of other responsible adults. The judge will remind you that your child has the right to an attorney during this hearing. You can hire an attorney for this hearing. If your family is low-income, ask the court to name a public defender or appoint an attorney. Do not leave the court until you find out the attorney's name and phone number. **Be sure to make contact with this attorney right away.**

- ◇ If your child is placed in a detention facility, encourage your child to be a “model citizen,” so that the judge and the prosecutor have reason to believe your child does not belong in adult jail.
- ◇ Many juvenile facilities have Web sites with schedules, policies and services. If you do not have access to a computer, ask the facility staff these questions.

What can I expect in a juvenile detention facility?

Ask the Court Service Unit for the location and phone number of the detention facility. Ask for a set of rules for parents. Be sure they include the following:

- ◇ What are the visiting hours? Do I need photo identification?
- ◇ May I bring my child personal items (e.g. soap, shampoo, shaving equipment, stamps, books)? What items will be available, if any? Are there any items I cannot bring?
- ◇ How many phone calls and letters is my child allowed each week? Are there any other restrictions on phone use?
- ◇ What educational services are available? Will my child receive appropriate classroom instruction, and for how long each day will he or she attend school?
- ◇ What mental health, counseling, or medical services are available?
- ◇ What activities will my child be able to access (for example: religious services, Girl or Boy Scout meetings, 12-step meetings)?
- ◇ How many children are housed in this facility? Who is living in the same room as my child?
- ◇ Who is supervising my child? How many adults staff the facility?
- ◇ What recreation is available to my child?

How can I help my child?

- ◇ It's important to remind your child to behave well. A child is often his or her own best character witness. If he or she is released, make sure the child attends school regularly and on time, completes all class work and homework, and avoids any trouble. Give the judge every opportunity to understand that your child belongs at home.
- ◇ If the lawyer does not get in touch with you within a week, you should tell the clerk of the court.
- ◇ Encourage your child to be honest with his or her lawyer. The information will be confidential between the two of them. The attorney needs to know all the facts and circumstances to present an effective defense.
- ◇ Just be there. Even if your relationship with your child is not at its best, it's important to show your support. It's also important to show the court that you support your child. A judge will be more likely to release a child into the custody of a concerned parent than one who is absent from the courtroom.
- ◇ Try to research possible programs or services from which your child might benefit—tutoring sessions, 12-step meetings, or other volunteer work—to demonstrate to the court that your child is invested in his or her own future. If these organizations can support your child, ask them to write a letter to the court, or ask if someone is willing to appear in court to show the court that your child has a support system standing by.

How can I help my child's lawyer?

- ◇ If your child has disabilities that make him or her unable to help with the court process, ask the attorney to seek an evaluation of your child.
- ◇ Your child's lawyer may have a large case load. Any investigative work that you can do is crucial. Try to locate witnesses to the crime; get their phone numbers and addresses; and pass this information along to your child's lawyer.
- ◇ Gather your child's school records and any other helpful information. Community service work and other personal achievements can demonstrate your child's positive character. Medical records or special education reports could shed light on possible disabilities or special needs your child might have if detained. See the checklist in the folder for what you need to gather.
- ◇ It's important to discuss with your child's lawyer how to **keep your child in a juvenile facility** if he or she will be detained.
- ◇ Ask questions. If your child is detained, a lawyer may not be able to visit as often as necessary. Try to keep communication open so you can reinforce important information the attorney needs your child to understand.
- ◇ Inform friends and family of court dates. The more visible your child's support network is, the bigger the impression upon the court. Ask former employers or teachers of your child to write letters of support, and ask if they will testify, if necessary.

Notes

Your Child's Attorney: _____

Phone Number: _____

Courthouse: _____

Judge: _____

Prosecutor: _____

Charge(s): _____

Court Dates: _____

For questions, please call JustChildren at 1-800-578-8111 (toll free).

Notes

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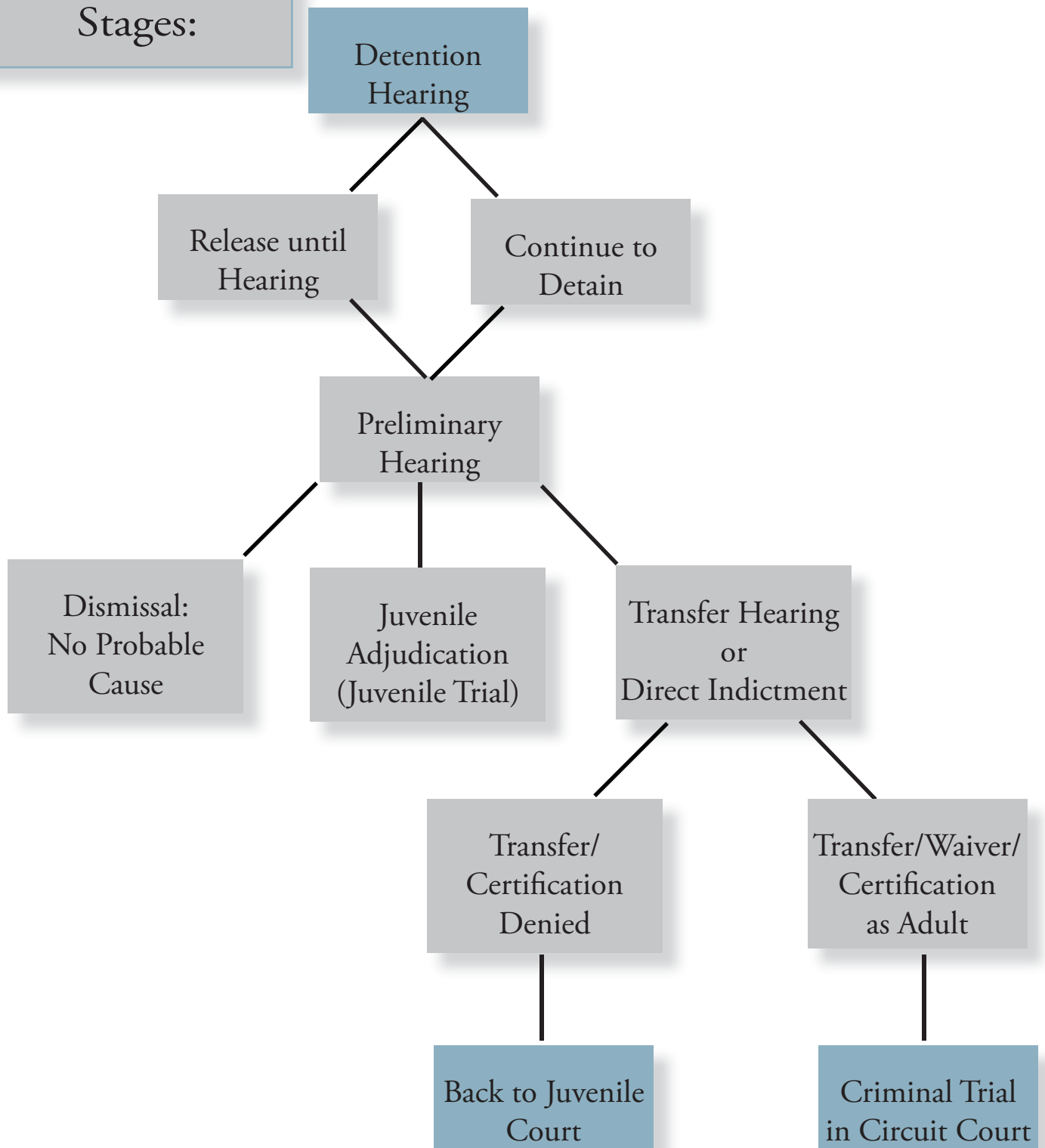
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The Preliminary Stages:



The Preliminary Hearing

In the **preliminary hearing**, the judge decides two issues: (1) is there **probable cause** to believe that the child committed the crimes charged, and (2) is the child competent or able to understand the court proceedings and help his or her attorney?

Probable Cause:

- ◇ Probable cause means that the court has a reasonable belief of two things: that the crime charged was committed, and that the person charged committed that crime.
- ◇ In the preliminary hearing, the Commonwealth's attorney may reveal a portion of his or her evidence, but will most likely present only enough evidence so that the court finds a "reasonable belief" that the child has been properly charged.

Competency:

- ◇ The court assumes that your child is competent to stand trial, unless the defense proves otherwise. If you think your child has a mental or emotional disability, or your child has difficulty understanding, tell your child's attorney. Provide the attorney with medical reports, prescriptions, education records, your child's behavioral history, and any other information showing why your child has problems understanding.
- ◇ If the attorney persuades the court that there is a question about your child's **competency**, a court will order an evaluation.

What is transfer to an adult criminal court?

In Virginia, when a juvenile 14 years of age or older is charged with certain felonies, the child may be transferred to and tried in the adult criminal court. For a transfer, the court uses the age of the child at the time of the offense. The child must be charged with an offense that would be considered a felony if done by an adult. If your child is convicted after transfer, a judge may sentence the child to all or part of the time in an adult prison; however, **unless a charge carries mandatory adult time, a judge may also use juvenile time alone.**

There are three ways a juvenile may be sent to adult (circuit) court: **Judicial Discretion**, **Automatic Transfer**, and **Prosecutorial Waiver**. These three procedures are written into law in Virginia Code §16.1-269.1.

- ◇ **Judicial Discretion**
- ◇ **Automatic Transfer**
- ◇ **Prosecutorial Waiver**

What does Judicial Discretion mean?

*Va. Code §16.1-269.1(a)**

For some felonies, the judge must look more carefully at the child's background if the prosecutor asks the court to transfer the child.

To do that, the court conducts a **transfer hearing** and considers a variety of facts about whether the child is "a proper fit" for the juvenile system. The Court Service Unit must prepare a transfer report about your child's history, including any gang involvement. The Unit also can offer helpful information about what services the child needs and can recommend commitment to the Department of Juvenile Justice. The transfer report contains:

- ◇ The child's age, school record, and his or her mental, emotional, and physical maturity.
- ◇ The seriousness of the offense.
- ◇ Can the child be rehabilitated in the juvenile system?
- ◇ What services is either the juvenile or the adult system able to provide?
- ◇ Has the child had previous contact with the juvenile justice system? What impact do those events have on the current situation?
- ◇ Has the child ever escaped from a correctional facility?
- ◇ Does the child have mental illness or mental retardation?

* Please see the **Appendix** of this guide for the full text of this law.

What will happen during a transfer hearing?

In the transfer hearing, it is important to show the court why your child does not belong in an adult court or an adult prison. The Commonwealth's attorney and the juvenile court must follow certain rules in holding such a hearing.

◇ You (as the parent) or your child's attorney must be given written notice of the transfer.

◇ The transfer hearing must be held within 21 days of your child's detention. If your child is released after a detention hearing or arrest, then the transfer hearing must be held within 120 days from the date the petition was filed against your child.

◇ The court must find that your child's act would have been a felony if committed by an adult.

◇ During the hearing, the Commonwealth's attorney will present information to the court about your child, including the seriousness of the offense, progress in school, mental health issues, and prior delinquency issues. The defense should present positive information, such as good things your child has done. In addition, any statements a child makes during his or her transfer hearing may not be used later to prove the charges against the child.

What is Automatic Transfer?

*Va. Code §16.1-269.1(b)**

If a juvenile 14 years of age or older is charged with any of the following offenses:

◇ First-degree Murder (§18.2-32)

◇ Lynching (§18.2-40)

◇ Aggravated Malicious Wounding (§18.2-51.2)

The juvenile court will conduct a preliminary hearing to determine if there is **probable cause** that the child committed the crime(s). Only the prosecution will be allowed to put on evidence. The child's attorney cannot show what happened in the crime or the good things about the child.

If the court finds **probable cause**, the charges will be certified to the **grand jury**, which may issue an indictment, resulting in trial in the adult criminal court.

If the court does not find **probable cause** that your child committed the crimes, or dismisses the charges, a prosecutor may still be able to transfer the case to adult court through a process called **Direct Indictment or Direct Filing**.

If the prosecutor wants to try your child as an adult, the prosecutor may not be discouraged by the lack of **probable cause**. At that point, a prosecutor can ask a grand jury to indict your child directly. During a grand jury hearing in circuit court, the grand jury determines whether there is enough evidence for a hearing in adult court. Only the prosecutor is present, not the defense.

*Please see the **Appendix** of this guide for the full text of this law.

What does Prosecutorial Waiver mean?

*Va. Code §16.1-269.1(c)**

If a juvenile is charged with any of the following crimes, a prosecutor may give written notice of his or her intent to try the youth as an adult:

- ◇ Murder (other than first-degree murder)
- ◇ Felonious injury by mob
- ◇ Abduction
- ◇ Malicious wounding, including malicious wounding of a police officer
- ◇ Robbery
- ◇ Carjacking
- ◇ Rape
- ◇ Forcible sodomy
- ◇ Object sexual penetration
- ◇ Felonious poisoning
- ◇ Adulteration of products (product tampering with the intent to kill or injure)

The prosecutor must notify both the court and the child's attorney (or, if the child does not yet have an attorney, you and your child will get notice). This notice must be given at least seven days before the preliminary hearing.

A prosecutor does not have to consider the factors that a judge examines in a full transfer hearing. The prosecutor, not the court, decides whether the youth is a proper fit for the juvenile or adult court. The court still must make a finding of probable cause that the youth committed the crimes charged.

Often the police are the only witnesses. The defense will not be able to present any evidence of the child's good behavior. The child's attorney may cross-examine witnesses about the charges. The child's attorney can also raise the child's competency if there are reasons the child cannot understand the proceedings and assist the attorney.

*Please see the **Appendix** of this guide for the full text of this law.

Notes

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What happens when a child is charged with more than one crime?

Your child may be charged with more than one crime. For example, if your child is charged with robbery, he or she might also be charged with “using a firearm in a robbery.”

The most serious charge will be the one used to decide which transfer process (Judicial Discretion, Automatic Transfer, or Prosecutorial Waiver) the court will use. Once a certain charge has qualified your child for transfer to adult court, other related but less serious charges—called **ancillary charges**—will also be transferred.

Can a transfer be appealed?

Only if your child's case has been transferred to the adult criminal court through judicial discretion can the transfer decision be appealed.

The child can appeal the juvenile court's transfer decision in circuit court within 10 days of the juvenile court's decision to transfer. Your child's attorney must show that the juvenile court did not follow the legal requirements for transfer.

If the child wins the appeal, the circuit court judge will return the case to the juvenile court.

On the other hand, **the prosecutor can appeal in a judicial discretion case** if the court does not grant the transfer.

What can I do for my child?

Before your child comes to court, try to make sure the child has appropriate clothing for the courtroom. The child should wear clothes similar to church clothing: a button-down shirt and pants for boys, and blouse and skirt or nice pants for girls. (If your child is being held at the detention center, try to deliver the clothes to them at the facility.) Depending on the circumstances, your child may come into the courtroom in a jumpsuit or even shackles.

You should consider selecting clothing that covers tattoos. Remind your child to select low-key jewelry, hair styles and hair accessories.

Remind your child to listen carefully to questions, to tell the truth, and only answer what is asked.

Everyone feels this process is upsetting, but it is important for your child to behave well while in and around the courtroom. Making a good impression is very important. It can't hurt to remind your child to sit up straight, maintain good eye contact with the judge, speak clearly and loudly enough for the judge to hear (say "Yes, ma'am" or "Yes, sir" when speaking to the judge), and try to remain calm and quiet in court.

What can I do for my child's lawyer?

If a child has a full transfer hearing, the Commonwealth's attorney will try to show the judge that the child is not appropriate for the juvenile system. The prosecutor will emphasize the serious charges and any negative behavior the child may have shown over the years.

The judge also has to consider all the positive qualities about your child. That is why it's so important that your child take advantage of any educational, recreational, therapeutic, or skills-building services that the community or detention center may offer. The goal is to show the court that your *child* benefits from services offered by the juvenile court system.

- ◇ If your child is in a special education program, make sure you provide his or her attorney with a copy of the latest IEP. If possible, ask your child's teachers to either write a letter or come to court, if the teachers will tell the judge that your child can do well with juvenile court services.
- ◇ Make a list to give to your child's attorney of all the activities your child has been involved in (sports teams, church groups, and even hobbies like drawing or writing).
- ◇ Be honest with your child's attorney about negative information that may surface in the transfer hearing, and the attorney can try to lessen its negative effect.
- ◇ Again, try to gather a "support team" for your child, such as church leaders, teachers, community members and employers. Ask them to attend the transfer hearing or at least write letters of support.

Notes

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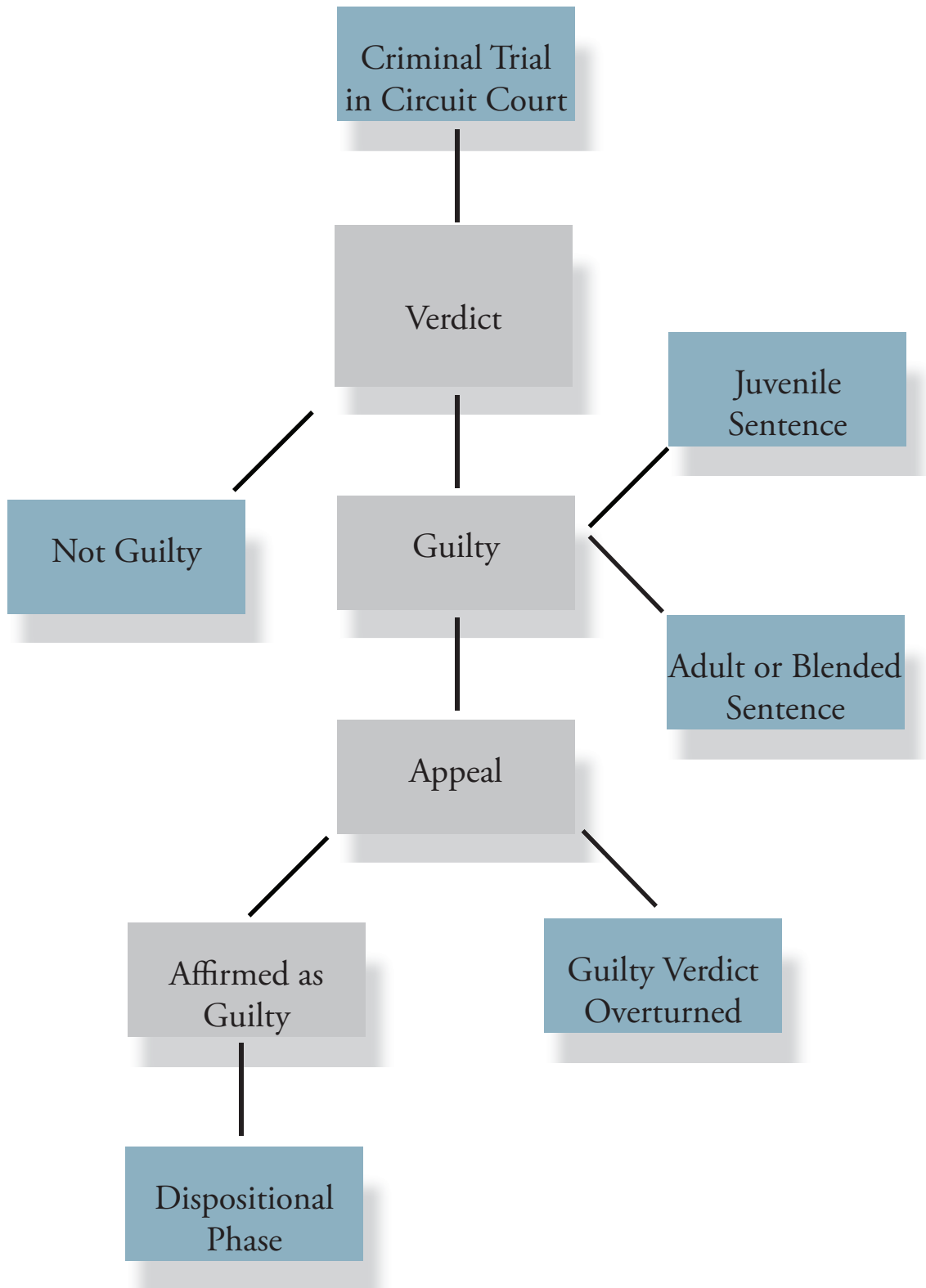
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The Final Stages:



What happens during the Criminal Trial?

At the trial in adult criminal court, the Commonwealth's attorney must prove each charge against your child **beyond a reasonable doubt**. This means that if a judge or jury has even a reasonable doubt that your child committed the charges, the judge or jury must acquit, or reach a verdict of *not guilty*.

Your child can have a jury trial or a trial before the judge. Here are a few things to keep in mind during the trial:

- ◇ Depending on where your child is being held, you may not be able to speak with or have any physical contact with him or her. It is important that you are present.
- ◇ The Commonwealth's attorney will put on witnesses that your child's attorney will be able to cross-examine. Your child's attorney may decide not to cross-examine for strategic reasons.
- ◇ Your child is not required to testify. Your child's attorney may not call your child as a witness in order to keep the prosecutor from being able to cross-examine the child.
- ◇ Write down questions to ask your child's attorney during your next meeting.

What can I do for my child?

- ◇ Remember to take court-type clothes to the detention center.

- ◇ Because your child is now in adult court, the trial may be before a jury. It's very important that both you and your child show respect while in front of both the judge and jury. A jury should only consider the facts and the law during the trial, but how they react to your child may play a part in their decision.

- ◇ Gather a support network of family, friends, and community members to attend the trial in support of your child. Be sure to remind them of the strict rules in the courtroom, and prepare them for what they might see and hear.

- ◇ Remind your child to mind manners, sit up straight, and act interested in what is happening in the courtroom.

What can I do for my child's lawyer?

- ◇ You may hear testimony from government witnesses that seems to be untrue or upsetting. Try not to react, either verbally or visibly, no matter how emotional it may be. If the testimony is untrue, use the “Notes” section of this handbook to write down your thoughts, and then share them with your child’s attorney at an appropriate time.

- ◇ Write down any questions and share them with your child’s attorney during an appropriate meeting time. Try to wait until you can meet in private, as there are often police officers, prosecutors, witnesses, and jurors present in the open areas of the courthouse.

- ◇ If your child’s attorney will be calling witnesses on behalf of your child, try to help make sure they are present in court when they are supposed to be. Provide your child’s attorney with any contact information for witnesses, if possible.

- ◇ Try to listen carefully and stay positive for your child.

The Sentence:

Juvenile Detention vs. Adult Prison

If your child receives a sentence that includes serving time, important reasons show why juvenile facilities are better than adult prisons.

In a juvenile correctional center:

Virginia's seven correctional centers are in small towns or rural areas. Most have tall fences topped with razor wire. In many ways, the juvenile correctional centers are juvenile prisons. The good points, though, are:

- ◇ Your child will be housed with other youth and supervised by officers with experience in dealing with youth.
- ◇ Your child will receive education.
- ◇ Your child may be able to take advantage of services, such as mental health care, job skills training, or substance abuse treatment.
- ◇ You will be able to spend quality time with your child during visitation—to interact with your child and provide attention to motivate your child.

In an adult prison or jail:

- ◇ Your child will be supervised by officers with little or no experience working with children.
- ◇ Your child may be placed in the same cell as an adult offender.
- ◇ Your child may not receive the same amount or quality of educational services available in a juvenile facility.
- ◇ Mental health care workers may not be trained to work with children.
- ◇ During visits, you may be physically separated from your child by a barrier.

What happens at the Sentencing Hearing?

If your child is convicted, the court will have a hearing to decide the punishment. The sentencing hearing should provide the judge with all the information needed to give an appropriate sentence.

The probation officer will prepare a pre-sentence report on your child. Your child's attorney and you can see this report. The judge will also hear from witnesses, such as the victim(s) of the crime, and your child.

You will want to talk with your child's attorney early to prepare for the sentencing hearing and to discuss sentencing options. If your child was not convicted of a felony, the court can sentence your child to treatment or rehabilitation in the community. Ask the attorney if there are helpful things you can do.

◇ Maintain regular contact with your child, and remind him or her to behave and take advantage of any services offered. Encourage your child to be a model citizen, so that the judge and the prosecutor believe your child does not belong in an adult facility.

◇ Share with the attorney any papers or other materials that reflect well on your child and his or her potential. This might include copies of school grades, progress reports, school work, certificates, diplomas, etc.

◇ Enlist the support of family, friends, church groups, and other community members to help develop a community support plan to enable your child to return to the community.

You will want to talk to your child’s attorney about the different sentencing options for your child. The judge’s options depend heavily on the crimes for which your child was convicted. A juvenile convicted as an adult may be given any of the sentences available to the juvenile court. This could include probation and other alternative programs. Ask about treatment or rehabilitation in the community.

Adult Sentence – A juvenile convicted of a felony may receive the same sentence as an adult. A juvenile could be sent straight to a Department of Corrections prison to serve a full sentence with adult inmates.

Blended Sentence – The court can sentence the child to a juvenile correctional center for part of the sentence, with the remainder of the sentence to be served in a Department of Corrections prison with adult inmates. Typically, a juvenile will be sentenced to a juvenile facility until reaching 21 years of age, then to an adult prison for the rest of the sentence, but the judge can send the child to the adult prison at an earlier age.

Juvenile Commitment with Suspended Adult Sentence – A juvenile may be committed to a juvenile correctional center for one sentence, with an additional sentence to an adult facility suspended. If your child behaves well and successfully completes the juvenile sentence and other conditions, he or she may not have to serve the adult portion of the sentence. If your child re-offends or does not meet the conditions of the juvenile sentence, however, he or she may have to serve the adult portion of the sentence.

Juvenile Commitment – Even after conviction as an adult, a juvenile can be committed to a juvenile correctional center for his or her entire sentence. Also, the child may be placed on probation for treatment in the community.

Mandatory Services – Judges may order the child to participate in anger management, substance abuse treatment, or sex offender treatment.

More on Sentencing

If a juvenile is convicted of a misdemeanor, the court will sentence the juvenile as permitted in a delinquency case in juvenile court.

Mandatory Minimum Sentences: A juvenile convicted of a felony that includes a mandatory minimum sentence must serve at least that minimum time in adult prison. The juvenile can still receive a blended sentence, spending the first part in a juvenile facility prior to transfer to an adult facility, but the time spent in the juvenile facility generally does not count toward satisfying the mandatory minimum.

How does the “Once an adult, always an adult” law work?

*Va. Code § 16.1-271**

A child certified or transferred to adult court and convicted in adult court will be treated as an adult in the courts in the future, even if the child is still under the age of 18.

This means that if other charges are filed against your child, or even if charges are pending at the time the child is convicted, it no longer matters how serious these charges are. Your child will now be treated as an adult in any future court matters.

Even if your child is convicted, or in the process of being transferred to adult court, a judge can still choose to hold your child in an adult facility pending trial.

* Please see the **Appendix** of this guide for the full text of this law.

What if my child is committed to the Department of Juvenile Justice?

If your child is sentenced to a juvenile correctional center, you can help him or her.

- ◇ Stay in regular contact with your child and encourage him or her.
- ◇ Get to know the staff at the correctional facility and the parole officer at the Court Services Unit. Stay in contact with the parole officer who will visit your child.
- ◇ Encourage your child to use the educational, mental health, job training and other available services.
- ◇ If your child was receiving special education services before being detained, he or she has a right to special education services in the correctional center. Make sure your child receives these services.
- ◇ Find out if there are services your child would like but isn't receiving, and talk to the facility to ask for them.
- ◇ If your child's sentence requires the completion of mandatory programs—anger management, substance abuse counseling, sex offender treatment, etc.—make sure the Department of Juvenile Justice makes these programs available. Encourage your child to participate and complete them on time. Make sure the programs are available immediately so that they can be completed during the length of your child's sentence.

DJJ Reception and Diagnostic Center

A child committed to the Department of Juvenile Justice (DJJ) will first go to the Reception and Diagnostic Center (RDC) at Bon Air, Virginia, near Richmond. The address is 1601 Bon Air Road, Bon Air, Virginia (804-323-2600). For one to two months, staff will interview the child and test the child to determine the best placement. Evaluations will include psychological, education, social and medical.

Length of Stay:

If the sentence is **indeterminate**, the staff will determine how long the child must stay in a juvenile facility. This is the **Length of Stay (LOS)**. The nature of the crime and prior criminal history are the major factors in length of stay.

Mandatory Services:

The staff at RDC will also decide whether your child must complete certain services before release. If a court has ordered specific services, they will be on the list, but RDC can also require services not ordered by the court.

Your Involvement:

You have a right to participate in a conference at RDC with your child to learn about the length of stay and mandatory services. If you cannot travel to Bon Air, ask to participate by telephone.

What are my child's rights at the correctional facility?

In a juvenile correctional center, your child has the legal right to:

- ◇ Safety
- ◇ Freedom from gangs
- ◇ Respect from the staff
- ◇ Education (even if held in isolation)
- ◇ Special Education if the child has an IEP
- ◇ Adequate medical and mental health care and substance abuse treatment
- ◇ Healthy food
- ◇ Daily exercise (even if held in isolation)
- ◇ Phone calls to family
- ◇ Visits with family

If these rights are violated, your child can file a formal grievance with the Ward Grievance Coordinator. Grievance forms are available in the facility. If you believe that any of your child's rights are being violated, keep a diary of the dates and incidents. This documentation can be important when trying to resolve disputes.

Parents can help to address their child's problems at the correctional center. Below are steps you can take to help your child fix the problem.

1. Talk to your child's counselor. Your child will be assigned a counselor at the juvenile correctional center.
2. If educational rights are involved, talk to the school principal.
3. Have your child file a formal grievance, if he or she hasn't already.
4. Send a letter or e-mail to the superintendent of the correctional center.
5. Meet with your child's treatment team.
6. Talk with your child's parole officer.
7. Write a letter to the director of the Department of Juvenile Justice.

The Sentence Review Hearing

If your child was convicted as an adult and given a *blended sentence*—a sentence requiring the child to serve some time in a juvenile facility, followed by additional time in an adult prison—the court will hold a review hearing about two years after the sentencing date. After that, the court will hold review hearings every year until your child turns twenty-one. The purpose is to review your child’s progress and the appropriateness of the sentence. At each of these hearings, the judge can do any of the following:

- ◇ Order your child to begin serving the adult portion of his or her sentence in an adult prison.
- ◇ Suspend part or all of the adult sentence if your child successfully completed the juvenile sentence requirements.
- ◇ Order the continued commitment of your child in the juvenile facility for the length of the original sentence or for a shorter amount of time.
- ◇ Release your child from the juvenile facility, under certain conditions.

The juvenile facility and the parole officer will make a recommendation to the court.

The review hearings are opportunities to persuade the court that your child has been rehabilitated while in the juvenile correctional center and should not have to serve additional time in the adult system. Before each hearing, you should speak with your child’s attorney.

Many of the ways you can help your child’s attorney for the original sentencing hearing will also be helpful in preparing for a review hearing. (Review the section on *The Sentencing Hearing*.)

With a blended sentence, is the child eligible for good time credits?

A child with a blended sentence can earn “good time credits” while at a juvenile correction facility. “Good time credits” are credits for time served with good behavior; this means the adult sentence can be reduced for an amount of time equal to the credits. If the child fully participates in required programs and follows the juvenile facility rules, the Department of Juvenile Justice can recommend to the Department of Corrections that the youth earn sentence credits to reduce his or her time in the adult prison system.

What if my child is sentenced to the Department of Corrections and an adult prison?

If your child is sentenced to an adult jail or prison, the kinds of services available in juvenile facilities may be harder to access.

You may be able to help your child gain access to appropriate services and conditions in the adult facility by asking the right questions and following up with Department of Corrections staff. Some questions you should ask are:

- ◇ When can I visit? Who else can come? What are the visiting hours?
- ◇ What services are available to my child? (Mental health, substance abuse treatment, etc.)? How often are they available to my child? Are any of these designed specifically to serve juveniles?
- ◇ What should my child be doing while in prison?
- ◇ What can I do to help my child?
- ◇ Who is my child's roommate? Is it another juvenile? If it is an adult, is that person dangerous to be rooming with a youth?
- ◇ How often and how regularly is my child in school? Is my child progressing toward graduation?
- ◇ If my child has a disability and/or special education needs, is he or she getting special education services?
- ◇ Is my child getting work training?

Coming Home from a Juvenile Facility

Returning home after serving a sentence is a difficult transition for both children and adults.

Critical Transitions

These items should be in the reentry plan put together by the parole officer (P.O.).

◇ **Education and/or Employment:** Will my child be able to return to school immediately, including any special education services? The P.O. is to set up transitioning to education in the community. Will my child be able to continue with vocational training started while in prison? Is there a GED program my child can complete? Are there continuing educational opportunities available?

◇ **Finances and Documentation:** What documents will my child need to get state identification? Work with the parole officer to learn what documents your child will need in order to sign up for any appropriate public benefits, to open a bank account, to apply for jobs, or to get housing? Is my child required to register with local authorities (as a sex offender, etc.)?

◇ **Health and Well-Being:** The P.O. must work with the Community Services Board to make a community service plan. Ask if this is being done. Are there prescription medications my child will need after release? Is my child receiving mental health services that should continue? Does my child have substance-abuse issues that require treatment? Who will pay for my child's health care and treatment? Will my child be eligible for public health care benefits? What will my child do to relieve stress?

Coming Home

You and your child will want to ask more questions as you prepare for the transition home:

◇ **Family and Social Relationships:** How will my child deal with especially bad or good relationships? What positive activities and social groups will be available to my child? Who should my child avoid? The parole rules will be developed for your child. Feel free to discuss the rules with your child's parole officer.

◇ **Housing and Transportation:** Where will my child live after release? Is that a positive environment? If it's in a public housing unit, will my child's criminal record be a problem? What chores or expenses will my child be expected to take care of? How will my child get around? What is the backup transportation?

◇ **Court Responsibilities:** What are the conditions of probation? How many times a week must he or she check in? How will my child communicate with the probation officer (with phone calls, face-to-face visits)? Is my child required to continue drug testing or any other conditions of release? Will my child have a curfew or electronic monitor?

◇ **Other services the P.O. has access to:** funds for services such as home-based services, sex-offender services, etc. Ask the P.O. about these services.

Many of these things will take a lot of time to arrange, so it's important to start planning early for your child's return—at least 90 days before release. Start by talking about these issues with your child's parole officer, correctional center counselor, other people involved with your child, friends and family members, and other resources in your community.

You will want to make sure people are working together and preparing for your child's release, including people in DJJ, the school, and other agencies.

Coming Home

Your child may have the right to transitional services from the Department of Juvenile Justice or the Department of Corrections.

Coming from Department of Juvenile Justice Custody

Children in DJJ custody have protections and rights that those in adult prisons don't have. DJJ is required to start planning for a child's re-enrollment in the public schools at least 30 days before release. The Department of Correctional Education should provide transition plans for education, career development and for finding a job.

Mental health services transition planning can help your child return to the community in a positive way. If your child has been on mental health drugs or received other mental health services, the staff at the juvenile correctional center must determine if the child is eligible to receive enhanced mental health transition planning at least 90 days before the child's release. You have a right to be involved in the planning for these services.

Coming from an Adult Prison

If your child is coming home from an adult prison, he or she may not get the same planning help from the Department of Corrections. Talk to your child's parole officer to see what planning help is available.

Notes

For questions, please call JustChildren at 1-800-578-8111 (toll free).

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Resources

The following is a list of organizations that specialize in different aspects of the juvenile justice system, ranging from direct legal services to research and advocacy. The information available on the websites listed below will help you navigate the juvenile justice system for both informational and advocacy purposes.

For more information and assistance in Virginia, please contact:

◇ **JustChildren, Legal Aid Justice Center www.justice4all.org**

JustChildren's lawyers provide legal representation to numerous young people from birth to age 18. The organization helps children with disabilities access appropriate education services and children with mental health problems access necessary treatment services. Just-Children also helps children involved in the juvenile court and children whose cases have been transferred to adult court to receive the support and services necessary to remain in their communities. It also represents children suspended or expelled from school.

Call Toll-free: (800) 578-8111 (clients only), or (434) 977-0553

◇ **Friends & Allies of Virginia's Youth www.FAVYouth.org**

Families & Allies of Virginia's Youth (FAVY) is an organization of advocates and family members of court-involved young people in Virginia. FAVY speaks out and seeks fair and effective treatment for all young people in Virginia's juvenile justice system. It promotes Virginia using a system of small, local rehabilitation programs based on proven models instead of youth prisons. FAVY supports prevention and diversion efforts including adequate community mental health treatment. **At monthly meetings in Goochland, near Beaumont, and in Northern Virginia, FAVY provides support for youth and their families. FAVY will be meeting in Tidewater and Richmond soon.**

Call 703-338-FAVY (3289)

For information on Law and Policy:

◇ **Center for Children's Law and Policy (CCLP) www.cclp.org**

The Center for Children's Law and Policy (CCLP) is a public interest law and policy organization focused on reform of juvenile justice and other systems that affect troubled and at-risk children, and protection of the rights of children in those systems. The Center's work covers a range of activities including research, writing, public education, media advocacy, training, technical assistance, administrative and legislative advocacy, and litigation.

Resources

◇ **Juvenile Law Center (JLC) www.jlc.org/**

Founded in 1975 as a non-profit legal service, JLC is one of the oldest public interest law firms for children in the United States. Through legal advocacy, research, publications, public education and training, JLC works to ensure that the child welfare, juvenile justice and other public systems provide vulnerable children with the protection and services they need to become happy, healthy and productive adults. JLC primarily serves youth in Pennsylvania, but lends its expertise to national advocacy efforts as well.

◇ **National Juvenile Defender Center (NJDC) www.njdc.info/index.php**

NJDC provides support to public defenders, appointed counsel, law school clinical programs and non-profit law centers to ensure quality representation in urban, suburban, rural and tribal areas. NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

◇ **Youth Law Center www.ylc.org**

The Youth Law Center is a non-profit, public interest law office that has worked to protect abused and at-risk children since 1978. With offices in San Francisco, the Center works nationally to serve children, focusing particularly upon the problems of children living apart from their families in child welfare and juvenile justice systems.

◇ **Southern Poverty Law Center (SPLC) www.splcenter.org**

The Southern Poverty Law Center was founded in 1971 as a small civil rights law firm. Today, SPLC is internationally known for its tolerance education programs, its legal victories against white supremacists, and its tracking of hate groups. SPLC also does select juvenile justice cases.

◇ **American Civil Liberties Union (ACLU) National Prison Project www.aclu.org/prison**

The ACLU's National Prison Project is the only national litigation program on behalf of prisoners. Since 1972, the NPP has represented more than 100,000 men, women and children. The NPP continues to fight unconstitutional conditions and the "lock 'em up" mentality that prevails in the legislatures.

Resources

For information on Research and Publications:

◇ **Race and Ethnicity Policy Brief Series**

<http://www.campaignforyouthjustice.org/policybriefs.html>

◇ **Justice Policy Institute (JPI) www.justicepolicy.org**

JPI is a national non profit research and public policy organization dedicated to ending society's reliance on incarceration and promoting effective and just solutions to social problems.

◇ **MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice www.mac-adolev-juvjustice.org**

The MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice is a group of experts in the field that seek to expand the base of knowledge about the origins, development, prevention, and treatment of juvenile crime and delinquency; to disseminate that knowledge to professionals and the public; to improve decision-making in the current system; and to prepare the way for the next generation of reform in juvenile justice policy and practice.

◇ **National Center for Juvenile Justice (NCJJ) www.ncjj.org**

Established in 1973, NCJJ has been a resource for independent and original research on topics relating to juvenile justice. Although the Center is the research division of the National Council of Juvenile and Family Court Judges, it has its own budget and is responsible for generating its own operating funds.

Resources

◇ **National Council on Crime & Delinquency (NCCD) www.nccd-crc.org**

The National Council on Crime and Delinquency, founded in 1907, is a non-profit organization that promotes effective, humane, fair, and economically sound solutions to family, community, and justice problems. NCCD conducts research, promotes reform initiatives, and seeks to work with individuals, public and private organizations, and the media to prevent and reduce crime and delinquency.

◇ **The Sentencing Project www.sentencingproject.org**

The Sentencing Project is a national organization working for a fair and effective criminal justice system by promoting reforms in sentencing law and practice, and alternatives to incarceration through groundbreaking research, aggressive media campaigns and strategic advocacy.

Resources

To find information on specific states:

◇ **Coalition for Juvenile Justice (CJJ) www.juvjustice.org**

CJJ is a national nonprofit association representing governor-appointed advisory groups on juvenile justice from the U.S. states, territories and the District of Columbia. CJJ promotes best practices and policies, educates the public and policy makers, oversees states' compliance with federal juvenile justice legislation and links national, state and local advocates together.

◇ **Community Justice Network for Youth (CJNY) www.cjny.org/locator.html**

CJNY is a program of the W. Haywood Burns Institute. This program is composed of community-based programs, grassroots organizations, service providing agencies, residential facilities and advocacy groups that focus their work on youth of color. The CJNY's primary function is to be a support network for organizers and practitioners who are on the ground working with youth who are at risk or already involved in the juvenile or criminal justice systems.

◇ **National Juvenile Justice Network (NJJN) www.njjn.org/**

Currently comprising 27 states, NJJN helps its members advance juvenile justice reform by establishing a vibrant learning community by convening annual summits and regional meetings. NJJN brings in national experts in media, organizing and advocacy to help states improve their legislative, programmatic, and administrative reform efforts.

Resources

◇ **Office of Juvenile Justice & Delinquency Prevention (OJJDP) <http://ojjdp.ncjrs.org>**

OJJDP is the federal office responsible for the juvenile justice system. “OJJDP collaborates with professionals from diverse disciplines to improve juvenile justice policies and practices. As a part of the Department of Justice, OJJDP accomplishes its mission by supporting states, local communities, and tribal jurisdictions in their efforts to develop and implement effective programs for juveniles. The Office strives to strengthen the juvenile justice system’s efforts to protect public safety, hold offenders accountable, and provide services that address the needs of youth and their families.”

◇ **Center for Policy Alternatives www.cfpa.org**

The Center for Policy Alternatives (CPA) empowers state legislators by simultaneously working at three levels: providing values-based leadership development programs to make legislators into more effective advocates for progressive policy; developing user-friendly policy tools on a wide variety of issues, making it easy for legislators to introduce and argue for progressive legislation; and building a strong, coordinated network of legislators across the states, enabling them to support one another as they take on the often-scary and sometimes-lonely job of leading the fight for progressive change.

**CPA has a link in the “Policy Models” section of its website on Juvenile Transfer Reform.

Resources

To find out about Successful Models & Promising Juvenile Justice Approaches:

States and policymakers nationwide have implemented reform programs in the juvenile justice system that reduce incarceration rates, connect youth with their communities and protect public safety. The publications and initiatives listed below are excellent examples of the kind of change that is necessary and possible in juvenile justice.

◇ **Keystones for Reform: Promising Juvenile Justice Policies and Practices in Pennsylvania**

<http://www.jlc.org/mfc/keystonesforreform.pdf>

◇ **Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI): A Road Map for Juvenile Justice Reform**

<http://www.aecf.org/-/media/PublicationFiles/2008EssaySummaryCharts.pdf>

◇ **Adoration of the Questions: Reflections on the Failure to Reduce Racial & Ethnic Disparities in the Juvenile Justice System**

http://www.burnsinstitute.org/downloads/BI%20Adoration%20of%20the%20Questions_2.pdf

◇ **Less Cost, More Safety: Guiding Lights for Reform in Juvenile Justice**

<http://www.aypf.org/publications/lesscost/index.html>

◇ **Less Hype, More Help: Reducing Juvenile Crime, What Works -- and What Doesn't**

<http://www.aypf.org/publications/mendel/index.html>

◇ **The Missouri Model**

<http://www.mysiconsulting.org>

◇ **Blueprints for Violence Prevention**

<http://www.colorado.edu/cspv/blueprints/index.html>

Take Action

Pushing for social change is a multistage process that requires education, collaboration and organization. Laws and bureaucracies are often difficult to navigate or confront by yourself – while you can easily call your legislator or local public official as a concerned individual, effective campaigns rely on the skills and efforts of a wide range of people.

The steps listed below provide a framework to participate in organizing efforts in your local area.

Getting Started...

◇ Become Knowledgeable About the Issues

If joining an organization or starting a new one will not fit into your schedule, attend as many informational forums on the criminal justice system as you can. Check out local community colleges, universities or other educational centers to see what is happening. The Internet is an easy place to start. The “Resources Guide” section of this manual has a list of helpful websites of organizations that specialize in a range of activities.

◇ Find Out How Others Have Done It

Talk to other groups who have put together a youth justice campaign. Look at their websites or visit their campaigns. Visit the Campaign for Youth Justice website to get information on current youth justice campaigns at: www.campaignforyouthjustice.org. Becoming part of a larger network of organizers and youth advocates who are fighting for similar causes will allow you to share successful campaign strategies and lessons learned.

◇ Contact or Join a Local Organization

Contact or join a local organization in your community that is currently working on or has the potential to work on the issue of trying, sentencing, and incarcerating youth in the adult criminal justice system. For contacts in Virginia, check out the Just Children website at www.justice4all.org or the Friends and Allies for Virginia’s Youth (FAVY) at www.fAVyouth.org.

Take Action

Raise Awareness

Public education is an important aspect of any issue-based campaign. Many people are not familiar with an issue if it does not affect them or someone they know directly. It is important to make the issue accessible to those who may not be directly involved in your campaign efforts by showing them how justice for youth is relevant to the entire community. Oftentimes, we gain allies by making these small but meaningful efforts – you may not convert the minds of entire groups of people but you can still expand your network of supporters:

◇ Start an informational email list to facilitate communication and spread word on the issue.

◇ Organize an “interest” meeting to gauge what the level of engagement is like in your community. Pass around a sign-up list at the meeting and add them to the email list. Play a relevant video (such as “Juvies”) or invite a guest speaker who will speak to the human impact of transfer laws.

◇ Organize forums, workshops or panel discussions on the juvenile justice system featuring experts from the field, local officials and community members.

◇ Host a youth-led speak-out to provide the necessary opportunity for young people to speak about their personal experiences in the justice system.

◇ Host a house party or social gathering to provide an informal, comfortable space in which people can talk about the issue. Forums or meetings may be too intimidating for some people who could have an open mind but are not intensely political. In social settings such as a house party, you are more likely to convince people to join in your efforts, no matter how small the task. It is always important to remember that in addition to full time volunteers and committed coalition members, the efforts of an individual who calls a legislator, sends out an email to 5 friends or mails out postcards are also valuable. *Check out the tool kit for hosting a house party that was used in Connecticut’s successful “Raise the Age” campaign at http://www.campaign4youthjustice.org/parent_tools.html

Take Action

Direct Action

At times, campaign efforts may seem far removed from the reality of the issue at hand. While sitting in meetings with public officials is necessary and important, the best way to take direct action is to join with others and utilize the collective power of the people. Direct action events are meant to “make noise,” literally and figuratively. Direct action raises the visibility of an issue and brings it to the forefront of people’s minds.

Postcard Campaign: At http://www.campaign4youthjustice.org/parent_tools.html you can download postcard templates or create one to fit your message. Using postcards to spread a message can produce good results in a small amount of time. Unlike letters, which are often thrown away without even being opened, postcards can be easily read and passed on to others. Postcard campaigns are inexpensive, effective, and easy. The following are some basic guidelines to conducting an effective postcard campaign:

Step 1: Consider your target audience.

Will this postcard be sent to legislators or the general public? What kind of information will be best suited for informing this audience?

Step 2: Develop a message.

Remember that postcards are relatively small, so make it short. A few words will be enough.

Step 3: Send your postcard to a professional printing company (e.g. Kinko’s or an online printer).

Send them your design and ask them to print it onto high-quality postcards. The printer will address the postcards if you provide a mailing list in an Excel spreadsheet. Otherwise you will need to print labels from your computer and affix them to the postcard.

Step 4: Send postcards out to target group, in a timely manner.

Take Action

Direct Action (cont'd)

In addition to a postcard campaign, you may want to consider these direct action responses in your efforts to effect change:

◇ Youth- or family- led speak-outs

In communicating an issue, especially one as controversial to the average citizen as prison reform, there are few things more poignant or moving than hearing someone's personal experience, listening to their story. You, your family, or your child are living through this experience and can help others just by sharing your insights, feelings and observations. Pairing these personal stories with important facts and information about the issue of juvenile justice reform can have lasting effects on a community, and consequently, on political leaders.

◇ Host a vigil

You can download a detailed toolkit at: <http://www.campaignforyouthjustice.org/Downloads/ParentTools/VigilGuidewebversion>

There are a number of different ways to hold a vigil. Some campaigns have held the same number of minutes of silence as the number of hours youth are in lock-down in the local prison. Vigils are held in a public space visible to the larger community and can feature an eloquent speaker, a poetry reading related to the issue and other creative forms of expression. A strong turnout is key to any vigil, so it is important to actively invite community members. Bringing together a large group of people for a demonstration is also an opportunity to hand out fliers and spread information on campaign efforts.

Parting Thoughts

The justice system is a complicated place, so you can imagine how difficult it must be for a child who is under the tremendous stress and emotional weight of criminal charges. You, as a parent, are in the position of being your child's best advocate, sometimes just by being present.

It's our hope in creating this guide that you'll discover even more ways to participate in your child's court experience. Encouraging your child and helping him or her to maintain positive behavior is as meaningful and important a task as helping your child's attorney gather information.

Your support will help to reassure your child that he or she is not abandoned during this life-changing experience. We hope you will find this guide useful in helping you and your child with the court processes. Remember to stay positive, stay present and stay involved.

Glossary

A

Adjudication: As juvenile matters are not considered criminal, adjudication is the process by which the juvenile court hears evidence of a juvenile's charges and makes a finding that is very similar to "guilty" or "not guilty" in adult criminal court.

Adult: A person who has reached the age of majority: in most states, age 18. If a juvenile is certified or transferred to adult court, the child will be considered an adult in court. In Virginia, a juvenile as young as age 14 may be tried as an adult.

Ancillary Charges: Additional or supplemental charges, usually relating to the most serious charge, e.g., use of a weapon in the committing of a felony would be an ancillary charge of armed robbery.

Appeal: Asking a higher court to consider a decision by a lower court. Some procedural decisions may be appealed to a higher court; in some circumstances, the decision to transfer a child can be appealed. Not all decisions present opportunities for appeal; you should discuss any questions about appeals with your child's attorney.

Arraignment: The first step in a prosecution: the defendant appears before the court to hear the charges against him or her and enter an initial plea.

B

Bail: A security—usually cash or a bond—required by the court to release a defendant who must appear at a future time.

Glossary

Beyond a Reasonable Doubt: The standard by which a person must be convicted of criminal charges; the highest standard of proof required in court proceedings. A judge or jury must find that they, as average citizens, harbor no reasonable doubts about the defendant's guilt in order to enter a guilty verdict.

Blended Sentence: If a juvenile has been transferred to adult criminal court and is found guilty, a judge may choose a variety of sentencing options, including blended sentencing, which combines juvenile sanctions with adult criminal penalties, e.g., a total of five years of incarceration, four of which may be served in the juvenile facility and the remainder of which to be served in adult prison. A blended sentence may also be given if the child will reach the age of majority before his or her sentence has been served.

Burden of Proof: In a criminal or delinquency proceeding, the burden of proving the defendant's guilt or involvement rests with the Commonwealth's attorney (the prosecution). This is commonly phrased as "innocent until proven guilty."

C

Certification: The process, under the transfer statute, by which the Commonwealth's Attorney requests that a juvenile's case be moved from the juvenile court to the adult court, when the juvenile is charged with certain serious felonies and is 14 years of age or older at the time the crime was allegedly committed.

Circuit Court: A state court that has broad jurisdiction. This is the court that will hear criminal cases that have been transferred from juvenile court, among others, as well as the court that hears appeals of transfer decisions from the juvenile court system.

Glossary

Code of Virginia: The set of laws (statutes) governing the state of Virginia.

Commonwealth's attorney: In Virginia, the prosecuting or government attorney.

Community-based treatment: Rehabilitative services provided by various therapeutic groups in a community. These can range from drug counseling services to residential group homes, to supplemental educational services and more.

Competency: A requirement of a defendant, in an adult criminal case or juvenile delinquency proceeding. A defendant must have the capacity to understand the court proceedings (including the charges levied), to consult with and understand the lawyer, and to assist in his or her own defense.

Conditions of Release: In either the pre-trial phase or dispositional phase of a court proceeding, a judge may condition your child's release on certain terms, including drug-testing, curfew, avoiding the site of the alleged crime, a stay-away order from involved parties, school attendance, and more. The child is released to a competent supervising adult (often the parent or other family member), but may be detained once again if found in violation of these conditions.

Confidentiality: A requirement placed on the court, agencies that work with the court, lawyers, and other people involved in the case that prevents them from communicating with others about the case. Sometimes it prevents the public from being in the courtroom to observe a trial when a juvenile is involved, and it may prevent the press from releasing certain identifying details about the case. In the context of your child's relationship with his or her attorney, it may prevent your child's attorney from discussing certain case matters if your child does not consent.

Glossary

Court-appointed attorney: Among your child's *Miranda* rights is the right to an attorney, even if he or she (or you as the parent) cannot afford one. If a public defender is not available to take your child's case, he or she may be given a court-appointed attorney. The court maintains a list of these private attorneys who are able to take such cases without any financial contribution from you or your child.

D

Deferred Sentence: A sentence that will not be carried out if the defendant meets certain requirements, such as complying with conditions of probation. A judge may also sentence a defendant to time in a juvenile facility, with extended time in an adult facility after age 21 deferred, contingent upon successful completion of juvenile time.

Department of Corrections: The Virginia agency governing the entire state prison system.

Department of Juvenile Justice: The Virginia agency governing juvenile detention facilities and other administrative aspects of juvenile delinquency.

Detention Assessment Instrument: The method by which a juvenile's need for detention versus release is measured. This tool can be used in the pre-trial detention phase of a child's case, or in disposition to help determine sentencing.

Disposition: In juvenile proceedings, the equivalent of an adult criminal sentencing hearing, or the adult criminal sentence itself.

Glossary

Diversion: A legal way to keep a case involving a juvenile from being filed in the juvenile court clerk's office. Intake Officers are permitted to divert less serious charges and instead provide informal sanctions and monitoring on the child.

E

Elements (of a charge): The individual portions of a criminal statute which must be demonstrated to prove guilt in a criminal case. This can include actions (e.g. "did murder"), mental state (e.g. "with the intent to kill"), and qualitative attributes (e.g. "with a dangerous weapon"). If any one of the elements of a charge is not shown to be true beyond a reasonable doubt, the defendant must be acquitted of the charge.

Evidence: The information, documents, testimony, and physical implements introduced into the criminal proceeding to show the likelihood that the defendant did or did not commit the alleged offense.

Expungement: The removal of a conviction from a criminal record; it is often available for juveniles when they reach the age of majority if they have served the entirety of their sentence.

F

Felony: A crime, sometimes involving violence, usually punishable by imprisonment for more than one year. Felonies are considered more serious than misdemeanor crimes.

Glossary

Flight-risk Factor: One consideration a judge may use in determining whether or not to detain a juvenile before trial and/or whether to set a bail or bond. The judge evaluates the likelihood that the person charged will appear for trial or other necessary hearings.

G

Grand Jury: A group of people (the number varying from state to state) tasked with the duty of inquiring into crimes committed in their community. The Grand Jury determines whether there is sufficient evidence to determine a probability of guilt, and returns indictments of specific charges against the defendant.

Guardian ad litem: An attorney appointed by the court to represent the best interests of a child in a civil case.

H

Hearsay: The report of another person's words by a witness. Hearsay is usually inadmissible in court, but there are a variety of exceptions that allow such testimony to be admitted.

I

Indictment: The formal, written accusation of a crime, made by a Grand Jury and used in the prosecution of a particular person for a particular crime.

Indeterminate: A type of sentence imposed after conviction of a crime that does not specify a definite period of time that must be served, but instead gives a range of time, such as "five to ten years."

Glossary

Intake: The process by which an Intake Officer makes or declines to make a finding of probable cause on an allegation against a juvenile. Should a finding of probable cause be issued, a petition on the allegations will be filed with the juvenile court clerk's office.

Intake officer: The individual who conducts the intake evaluation on a juvenile. This officer can determine whether to seek a petition against a child, or to divert the charges and require informal sanctions (or dismiss).

J-K

J&DR Court: The Juvenile and Domestic Relations Court in Virginia. This is the court that will hear juvenile delinquency matters, among others, and will hold the transfer hearing, if applicable.

Jail: A secure detention facility usually used for short-term incarceration, such as pre-trial detention or short dispositional sentences. These facilities are often run by the localities in which they sit.

Jurisdiction: A particular court's power to hear a case. Once a juvenile's case has been certified or transferred to adult court, the J&DR court loses jurisdiction over the child and relinquishes it to the adult Circuit court. If the child is not transferred properly, or if the transfer decision is overturned, the juvenile court will maintain jurisdiction over all subsequent matters unless the juvenile is properly transferred or until he or she reaches the age of majority.

Juvenile: For legal purposes in Virginia, a person under the age of 18 years. Once a child has charges certified or transferred to the adult criminal court, however, he or she is no longer viewed as a juvenile in the eyes of the court.

Glossary

Juvenile Competency Services: A government agency often tasked with determining a juvenile's competency to stand trial. If JCS officials find that a juvenile is not competent, they may order services such as counseling or other therapy to try to restore the child to competency.

Juvenile Detention Facility: The secure facility created to hold adjudicated juveniles and some juveniles awaiting trial. These facilities should provide educational services (including special education), and most also offer other services such as drug counseling and skills-building courses.

Juvenile transfer: In Virginia, the process by which legal jurisdiction over a juvenile between the ages of 14 and 18 is moved from the juvenile court system to the adult court system. Transfer may only occur in cases involving certain serious felony charges, as defined in the transfer statute, Va. Code §16.1-269.1.

L

Lesser-included offense: A crime for which all the elements necessary to impose liability are also elements found in a more serious crime. A judge may be able to instruct a jury that they may find a defendant guilty of the most serious crime charged, or they may find guilt of a less serious related crime if all the elements are present. For example, a judge could instruct a jury that they may find a defendant guilty of aggravated assault, or if the aggravated nature of the crime is not found, a jury may convict the defendant of a simple assault.

Length of stay: The actual time served in a correctional facility, which may differ from the amount of time given at sentencing.

M

Magistrate: A civil officer or lay judge presiding over a court that hears minor offense and some preliminary matters in more serious cases. A magistrate judge may preside over a juvenile's preliminary hearing(s).

Glossary

Mandatory Minimum Sentence: Certain serious felonies (such as some firearms offenses) carry a requirement that a person serve a minimum amount of time in prison if convicted. If a juvenile is transferred to adult court and is convicted of a charge that carries a mandatory minimum sentence, the juvenile must serve that minimum time in an adult facility; a judge may not credit time spent in a juvenile facility towards the sentence.

Miranda rights: Based on the Supreme Court case of *Miranda v. Arizona*, which confers certain rights to any person taken into custody, including the right to remain silent and the right to an attorney, even if the individual cannot afford representation. Police officers have a duty to inform individuals taken into custody of their *Miranda* rights before any questioning occurs.

Misdemeanor: A non-indictable offense, considered to be less serious than a felony. These charges can be taken into account, however, when a judge is making decisions about pre-trial release and transfer, and can also add time to criminal sentences.

Motion: A written or oral request to the court to make a specific ruling or order. These can include motions to suppress evidence, motions to dismiss the charges, or motions to transfer a juvenile from an adult facility to a juvenile detention center, among countless others.

N

Nolle Prosequi: The legal abandoning of a prosecution. Essentially, the withdrawal of charges by the prosecution, although these charges may be re-filed at a later time in some cases.

Notice: The formal delivery of information to relevant parties in a court matter. In order to proceed with transferring a juvenile to adult court, the child's parents or attorney must be given proper notice.

Glossary

O-P

Parole: The release of a prisoner before the expiration of his or her given sentence, either temporarily or permanently, on the condition of good behavior or the completion of other court-ordered conditions.

Petition: A formal written request presented to a court or other official body; an official complaint, often used to represent allegations made against juveniles.

Preliminary Hearing: Hearing held before trial to determine such matters as pre-trial detention, competency, probable cause, and transfer.

Prison: Facilities with varying degrees of security where adult offenders are held after sentencing.

Probable Cause: A finding made by a judge or Grand Jury that there is a reasonable basis to find a specific person guilty of the specific charges against him or her. Police officers must also make a finding of probable cause before conducting some searches or police stops.

Probation: The release of an offender from detention, subject to a period of good behavior under supervision.

Probation Officer: A person appointed to supervise offenders who are on probation. The officer may be tasked with monitoring drug testing, job search, educational progress, and/or participation in any court-ordered programs. An offender may be required to meet with the probation officer on a regular basis, either in person or by phone.

Glossary

Public Defender: A lawyer employed at public expense in a criminal trial to represent a defendant who is unable to afford legal assistance.

R

Recognizance (also, personal recognizance): usually a bail bond that guarantees that a criminal defendant who is not detained will return for a court date. Personal recognizance: when the court accepts the defendant's word that they will return for a court date, without placing any bond or putting up any money.

Respondent: The person against whom a civil case or petition is filed through the Intake Officer.

Rules of Evidence: A set of rules governing how evidence is admitted and used or excluded in court proceedings. These rules can vary from state to state, but are generally quite similar in nature.

S

Sentence: The resulting disposition following a guilty verdict. In a jury trial, the jury makes a finding of guilty or not guilty, and can make sentencing recommendations, although the judge still holds the final say. In rare instances, a judge may overturn a jury's verdict if he or she finds it to have been made in (legal) error, and may also choose to stray from the jury's sentencing recommendation.

Glossary

Social History Report: Information collected for the purpose of aiding a judge in determining whether a juvenile should be released pending trial, transferred to adult court, or sentenced to detention as a disposition. The report can include psychological, sociological and educational evaluations conducted by court order, as well as family histories and other information deemed pertinent.

Subpoena: A writ ordering a person to appear in court for a specific matter. A subpoena may also be used to compel a person or agency to produce certain documents or other evidence related to a court proceeding. Witnesses in your child's case may receive subpoenas from either the prosecution or the defense attorney.

T-U

Transfer Hearing: When a juvenile is charged with certain serious felony charges, the court may hold a transfer hearing to determine whether the child is a proper fit for the juvenile justice system, or whether the child should be transferred to the adult criminal court.

True Bill: A Grand Jury's determination that a criminal charge should go to trial.

V-Z

Warrant: An order directing or authorizing someone to do an act, especially one directing a law enforcer to make an arrest.

Appendix

On the pages following, you will find the actual text of the laws discussed in this guide. If you have any questions about these or other laws, ask your child's lawyer or contact JustChildren (www.justice4all.org) at 434.977.0553.

You can also look up laws included in the Virginia Code and check on other state legislative matters on the following site: <http://leg1.state.va.us/>

Judicial Discretion: What the law says

Va. Code §16.1-269.1(a)

(a) Except as provided in subsections B and C, if a juvenile fourteen years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent, guardian, legal custodian or other person standing in loco parentis; or attorney;
2. The juvenile court finds that probable cause exists to believe that the juvenile committed the delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an adult;
3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the evidence; and
4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

- a. The juvenile's age;

continued

- b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was against persons or property, with greater weight being given to offenses against persons, especially if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than twenty years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;
- c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;
- d. The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;
- e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;
- f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;
- g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;
- h. The juvenile's school record and education;
- i. The juvenile's mental and emotional maturity; and
- j. The juvenile's physical condition and physical maturity.

Mandatory Transfer: What the law says

Va. Code §16.1-269.1(b)

(b) The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of §§18.2-31, 18.2-32 or 18.2-40, or aggravated malicious wounding in violation of §18.2-51.2.

Prosecutorial Waiver: What the law says

Va. Code §16.1-269.1(c)

(c) The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of § 18.2-54.1, adulteration of products in violation of § 18.2-54.2, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

Direct Filing: What the law says

Va. Code §16.1-269.1(d)

(d) Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

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 nolle prosequi in the juvenile court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

If the court finds that the juvenile was not fourteen years of age or older at the time of the alleged commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have not been met, the case shall proceed as otherwise provided for by law.

The “Once an adult, always an adult” law: What it says

Va. Code §16.1-271

Conviction of a juvenile as an adult pursuant to the provisions of this chapter shall preclude the juvenile court for taking jurisdiction of such juvenile for subsequent offenses committed by that juvenile.

Any juvenile who is tried and convicted in a circuit court as an adult under the provisions of this article shall be considered and treated as an adult in any criminal proceeding resulting from any alleged future criminal acts and any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction.

All procedures and dispositions applicable to adults charged with such a criminal offense shall apply in such cases, including, but not limited to, arrest; probable cause determination by a magistrate or grand jury; the use of a warrant, summons, or capias instead of a petition to initiate the case; adult bail; preliminary hearing and right to counsel provisions; trial in a court having jurisdiction over adults; and trial and sentencing as an adult. The provisions of this article regarding a transfer hearing shall not be applicable to such juveniles.

Sentencing: What the law says

Va. Code §16.1-272 (A) - (B)

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge, the court shall fix the sentence without the intervention of a jury.

1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case including, but not limited to, commitment under subdivision 14 of § 16.1-278.8 or § 16.1-285.1.

2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

3. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer.

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