

GUARDIAN AD LITEM MOTIONS PRACTICES

Filing Motions generally

- **JDR court forms** (online – motion to amend/review order; motion to expedite; motion for emergency hearing) vs. drafting your own legal pleadings: You will need to file the motion and the clerk and judge will review and contact you for scheduling unless there is a reason to notice the motion for the trial date or next scheduled review date.
 - **See:** <https://courts.viriniabeach.gov/juvenile-domestic-relations-district-court/forms-used-in-jdr>
 - **Attachment 1: DC-511 (Petition) (fillable form available on website)**
 - **Attachment 2: DC-630 (Motion to Amend) (fillable form available on website)**
- **VBJDRC practice: Remote hearing requests** – WebEx/telephonic (for yourself or for your witnesses or even the children you represent if residing outside of area) (Direct parties to file their own remote hearing motions, do not file on their behalf.)
 - **Attachment 3: remote hearing request (also on website linked above)**
- How to provide notice of motions to parties and counsel (and when can an *ex parte* motion be filed?) (Typically, the clerk will send out notice of a docketed motion to the parties; however, notice should always be given by you to counsel of record, and the dates should be cleared to the extent possible prior to scheduling a motion.)
- When is a **letter to the Court** sufficient instead of filing a motion?
 - Examples: advising court of recent incarceration of parent/party for transportation order and/or consideration of appt of GAL for parent/party; request for continuance (if agreed by all, it can be by letter but still requires judicial approval, if not agreed, motion will be necessary); other examples

VBJDRC practice: Whenever possible, file by e-mail to clerk: vbjdr@vacourts.gov & DO NOT USE multiple filing methods

Parental Cooperation Motions – Civil Cases

- Parent refusing access to a child and alternate access is unavailable (e.g. other parent does not have contact/visitation to allow access; school visit is not an option due to age of child, summertime, or home-schooled children)
- Motion to Compel Participation / Motion to Dismiss if a petitioning parent/party has not cooperated with your investigation
 - Ways to properly document your attempts to contact and communicate with parties
 - Can you request this type of order be entered by letter to Court (as discussed above) or within a GAL report, as opposed to a legal pleading?

Motions for Further Evaluation/Information

- Parenting Capacity Evaluations/Custody Evaluations/Psychological Evaluations of parties or children (note: these evaluations are often cost-prohibitive)
 - VBJDR practice: What providers are presently handling these evaluations in Hampton Roads?
- Drug/alcohol screening – hair or nail follicle/urine or saliva/ BACTrack or other manual screening devices
 - VBJDRC practice: What local providers are most accessible for drug testing?

Protecting Child's Medical/Mental Health Information

- Generally, a parent has direct access to child's records pursuant to Va. Code 20-124.6 & a child's physical and mental health is one of the main factors for best interests consideration under VA Code 20-124.3
 - What if one or more parties is not a parent nor person currently holding legal custody?
 - Speaking with child's providers – can you advise them of the language in 20-124.6 that allows them to protect from disclosures to either/both parent(s) if warranted?
 - **Attachment 4: Virginia Code 20-124.6**
- Motion to Quash (MTQ) Subpoena Duces Tecum (SDT) for mental health records and remedies
 - Protective order governing distribution of child's records
 - **Attachment 5: Sample motion to quash – make sure to send copy of this to the provider to whom an SDT has been served, otherwise the provider may feel compelled to provide the records pursuant to the deadlines on the SDT**
 - **Attachment 6: Sample protective order governing mental health records**
 - In camera (by judge only) review (and possible limited release of records)
 - Only if agreeable to all, GAL may be only person permitted to inspect, release, and/or report on content of records

Motion to pre-approve GAL costs (“outside the norm” costs)

Examples: expert witnesses, travel (may even include airfare/hotels/etc.), private investigators or process servers, court reporters, interpreters

Attachment 7: Motion re: advance approval of costs

“Catch-all” motion practice

When might it be necessary to file motions to manage the conduct of parties or modify parenting schedules during the pendency of the case?

Motion to Reconsider (temporary or final orders) / Appeals by GAL (final orders)

- To address judges' scriveners' errors or omissions when judge drafts order after time of trial OR
- When something radical occurs before receiving final order or within short time frame of entry of final order and appeal would not sufficiently address it
 - **Attachment 8: Sample motion to rehear/reconsider**

When, where, and how to file an appeal as GAL for the child

CHINS (Child in Need of Services/Supervision) Petitions

Attachment 9: VA. Code 16.1-278.4 + 16.1-278.5 + VA. Code 16.1-278.8 + Va. Code 16.1-292

- Filed at court intake (basement) - What intake requires to accept petition *May require a separate motion to the presiding judge and order requiring GAL to file CHINS*
- Difference between CHINS (supervision) and CHINS (services)
- Remedies available in the CHINS process
 - Court-Appointed Counsel for Child
 - CHINS evaluation of the child & family
 - Wrap-around services through Court services unit
 - Placement options – transfer of custody to relative or DHS is a CHINS remedy – the interplay between civil/criminal/DHS in JDR practice
 - Consequences to the child (and parent/guardian) for action/inaction including juvenile detention
- Trepidations about filing a CHINS petition against your ward
 - Adversarial relationship with child may limit ability to effectively communicate with child and continue to represent child's best interests
 - Alternatives to filing for CHINS as GAL: (1) Requesting Give information (not advice) to parent/guardian on filing CHINS petitions or explaining to a relative/third party that a custody petition can be filed to consider placement outside the child's home; (2) If a DHS case (even if child is not in foster care), the social worker/city attorney can file a CHINS petition
- How to file CHINS violations – file alleged violation as new DC-511 Petition NOT as a civil or criminal show cause motion (which are applicable to adult defendants only)

Worst case scenario motions/petitions

- When to contact CPS (GAL is NOT a mandated reporter)
- Assisting a child in filing a family abuse protective order (JDR intake)
 - Assisting a child in filing an emancipation petition
- When to file motion to withdraw as GAL – discretionary & mandatory

When/if you are threatened/placed in danger

- Requesting protective orders – magistrate / VBGDC
- Potential show cause motions and/or civil sanctions motions against parties in cases
 - Potential misdemeanor and felony charges against parties in cases

**NOTICE OF RIGHTS TO DESTRUCTION OF JUVENILE AND
DOMESTIC RELATIONS DISTRICT COURT RECORDS**

(Va. Code § 16.1-306)

■ Records relating to a proceeding where a juvenile is found guilty of a delinquent act which would be a felony if committed by an adult will not be destroyed.

■ Records related to other proceedings concerning a juvenile will be destroyed automatically when:

such juvenile is nineteen (19) years old or older and

five years have passed since the date of the last hearing in the case. However, if the juvenile was found guilty of an offense reportable to the Virginia Department of Motor Vehicles, the records shall not be destroyed until the juvenile is twenty-nine (29) years old.

■ You may request the earlier destruction of the court records in this case ONLY IF:

1. You were the subject of a delinquency or juvenile traffic proceeding, and
2. You were found innocent of the charge or the charge was otherwise dismissed, and
3. You file a motion with this court requesting destruction of the records connected with such charge with notice being given to the Commonwealth's Attorney.

Unless good cause is shown why the records should not be destroyed, this court shall grant the motion.

MOTION TO AMEND OR REVIEW ORDER

Commonwealth of Virginia

Case No.

General District Court

Juvenile and Domestic Relations District Court

.....
COURT ADDRESS

This motion is filed in connection with Case No.

In re
NAME OF CHILD

..... **v.**
PERSON FILING MOTION MOTHER FATHER OTHER OTHER PARTY MOTHER FATHER OTHER

..... ADDRESS/LOCATION ADDRESS/LOCATION

.....

..... TELEPHONE NUMBER TELEPHONE NUMBER

I respectfully represent to the Court that an order dated was entered
DATE

by the above-named Court Court.

That order states as follows:

.....
REQUIREMENTS OF ORDER

I request that the attached order be changed, amended, and/or modified as follows:

.....
REQUESTED CHANGES, AMENDMENTS AND/OR MODIFICATIONS TO ORDER

I request these changes for the following reason(s):

I request a hearing on the modifications of the above order proposed by the Department of Social Services and that the Court take whatever other action it deems necessary.

.....
DATE

.....
SIGNATURE OF PERSON FILING MOTION

Case No.

Additional parties to receive notice:

| | |
|---------------------------|---------------------------|
| OTHER | OTHER |
| ADDRESS/LOCATION | ADDRESS/LOCATION |
| TELEPHONE NUMBER | TELEPHONE NUMBER |

NOTICE

(PARTY TO BE SERVED)

You are hereby notified that on, a hearing will be held by this Court to consider a motion to change, amend, and/or modify the terms of an order as described in the Request on the reverse side.

..... DATE AND TIME _____ CLERK

SERVICE OF PROCESS ON PARTY TO BE SERVED

Personal service

Being unable to make personal service, a copy was delivered in the following manner:

Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport (List name, age of recipient and relation of recipient to party named above.)

Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

Not found

| |
|--|
| <p>CASES TO ENFORCE CHILD SUPPORT ONLY:</p> <p><input type="checkbox"/> Delivered to the</p> <p><input type="checkbox"/> residential <input type="checkbox"/> business address of record.</p> |
|--|

..... DATE _____ SERVING OFFICER

for _____

MOTION FOR REMOTE HEARING

Commonwealth of Virginia

Case No(s). _____

Court Date _____

Virginia Beach Juvenile & Domestic Relations District Court

*Pursuant to Virginia Code Sections 16.1-276.3 and 19.2-3.1, it is
SOLELY WITHIN THE DISCRETION OF THE COURT WHETHER TO CONDUCT ANY HEARING USING A TELEPHONIC
COMMUNICATION SYSTEM OR AN ELECTRONIC AUDIO AND VIDEO COMMUNICATION SYSTEM TO PROVIDE FOR THE
APPEARANCE OF ANY PARTIES AND WITNESSES.*

*It is the responsibility of the requesting party to ensure
that those appearing remotely have the ability to connect in the manner requested.*

Case Name(s): *In re:* _____

| | | |
|--------------------------------|----|--------------------------------|
| _____ | v. | _____ |
| Petitioner/Plaintiff | | Defendant/Respondent |
| _____ | | _____ |
| Address | | Address |
| _____ | | _____ |
| Address | | Address |
| _____ | | _____ |
| Telephone Number/Email Address | | Telephone Number/Email Address |

Remote Mechanism Requested:

Telephonic or WebEx – Best used with a personal computer, will have to download free program.

Persons appearing remotely: More than two participants appearing remotely - Addendum attached

| | |
|--|--|
| <input type="checkbox"/> Witness <input type="checkbox"/> Other _____ Name _____ Address _____ <input type="checkbox"/> Address Confidential – DC-621 attached or on file Phone _____ Email _____ | <input type="checkbox"/> Witness <input type="checkbox"/> Other _____ Name _____ Address _____ <input type="checkbox"/> Address Confidential – DC-621 attached or on file Phone _____ Email _____ |
|--|--|

Reason for remote hearing request: _____

Are you a Respondent to a Show Cause: Yes No (Respondents to Show Causes may be required to appear)

Remote Evidence to be presented: None Documents Pictures Objects _____

Interpreter*/Other Special Needs: None Yes – Explain _____

*Interpreter Request must be submitted – Click here to access the form on the court’s website: [Interpreter Request Form](#)

Requesting Party: _____ Petitioner/Plaintiff Defendant/Respondent
 Attorney Self-represented

CERTIFICATE OF SERVICE

I certify that on _____, 20____, I (check one) mailed emailed faxed a copy of this motion to:

Opposing Party Name: _____

Opposing Attorney Name: (if any) _____

Address: _____

Email address: _____

Fax Number: _____

OR

There was not sufficient time to notify the opposing party or counsel of this remote hearing request because

Respectfully submitted, _____ [Signature]

_____, 20 ____ [Date]

[YOUR INFORMATION BELOW]

NAME OF PARTY OR ATTORNEY: _____

LAW FIRM NAME (IF APPLICABLE): _____

MAILING ADDRESS: _____

TELEPHONE NUMBER: _____

E-MAIL: _____

BAR NUMBER (IF APPLICABLE): _____

COURT USE ONLY

ORDER

Granted Denied Other _____

Judge _____ Entered _____

Parties notified on _____ by _____
Date Deputy Clerk

WebEx invite sent on by _____ by _____
Date Deputy Clerk

§ 20-124.6. Access to minor's records

A. Notwithstanding any other provision of law, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records or records of a child day center or family day home of that parent's minor child unless otherwise ordered by the court for good cause shown or pursuant to subsection B.

B. In the case of health records, access may also be denied if the minor's treating physician, clinical psychologist, clinical social worker, or licensed professional counselor has made a part of the minor's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person. If a health care entity denies a parental request for access to, or copies of, a minor's health record, the health care entity denying the request shall comply with the provisions of subsection F of § 32.1-127.1:03. The minor or his parent, either or both, shall have the right to have the denial reviewed as specified in subsection F of § 32.1-127.1:03 to determine whether to make the minor's health record available to the requesting parent.

C. For the purposes of this section, the terms "health record" or the plural thereof and "health care entity" mean the same as those terms are defined in subsection B of § 32.1-127.1:03. The terms "child day center" and "family day home" mean the same as those terms are defined in § 63.2-100.

1994, c. 769;2000, c. 485;2005, cc. 181, 227;2020, cc. 178, 945;2022, c. 509.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT
COURT OF THE CITY OF VIRGINIA BEACH**

In Re: _____, D.O.B. _____

Case No.: JJ _____ - ____ - ____

MOTION TO QUASH SUBPOENA *DUCES TECUM*

NOW COMES the Guardian *ad Litem* for the minor child who is the subject of the litigation herein, counsel for Petitioner John Alan Aikin, shall move this Honorable Court to quash the Subpoena *Duces Tecum* issued by [Counsel for the Petitioner/Respondent], directed to [provider], a copy of said subpoena is attached hereto, or, in the alternative, to issue a protective order governing the release of said records to the parties and/or their counsel.

[Optional: As grounds therefore the Petitioner submits as follows (examples only below):

1. The provider has included in said records a Notice pursuant to Section 20-124.6 of the Code of Virginia.
2. The minor child has an interest in protecting his/her privacy
3. The relationship between the child and his/her therapeutic provider may be substantially damaged by the release of said records.
4. One or more parties to this case is/are not a legal parent and do not hold legal custody of the child and are not otherwise entitled to reviewing the child's health records pursuant to the Virginia Code.

5. The release of records to the parties/parent(s) poses a substantial threat to the child's mental health and stability.

Respectfully submitted,

Guardian ad Litem

**VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
FOR THE CITY OF VIRGINIA BEACH**

In re: _____, D.O.B. _____

Case Nos.: JJ _____ - - -

**PROTECTIVE ORDER GOVERNING
MENTAL HEALTH RECORDS**

CAME THIS DAY the Guardian *ad Litem*, and moved for entry of a protective order governing the distribution of the mental health records of the child(ren) [alt: parenting capacity evaluation / medical records / , and the parties, by counsel, have agreed;

In consideration whereof, it is hereby **ADJUDGED, ORDERED, and DECREED** that the mental health records of the child, specifically [name providers], shall only be produced/distributed as follows:

1. The records, information and documents disclosed, furnished, or submitted to counsel shall be used solely for the purpose of this action and shall not be communicated in any manner, verbal or otherwise, to anyone other than a person qualified under the terms of this Order.

2. Access to the records, information and documents disclosed, furnished, or submitted to counsel shall be restricted to the following:

a. The attorneys (including the Guardian *ad Litem*) in the law firms appearing in this action and the staff who are directly employed by those firms and are assisting the attorneys working on this action;

b. Experts or consultants retained by the parties, or by counsel for the parties, in connection with this action;

c. The Court and Court personnel, including stenographic reporters engaged in such proceedings are as necessarily incident to the preparation or trial of this litigation;

d. Such other persons as that the Court may determine; and

e. The parties may review the records in the direct presence of their attorneys, for trial preparation purposes, but shall not make or retain copies, physical or electronic, of the records, nor shall they be permitted to scan, photograph, transcribe, or otherwise keep any portion of the evaluation in his or her possession.

f. Under no circumstances shall the parties discuss the content of the records with any of the minor child(ren) in any capacity. The Guardian *ad Litem* may discuss the records with the minor child(ren) directly, to the extent the Guardian believes that said discussion is in the child(ren)'s best interests.

3. No confidential record, document or information subject to this Order shall be produced or disclosed to any other person in connection with this litigation unless that person falls within the class of persons described in paragraph 2(b) or 2(d), and that person further agrees, in writing, to be bound by the terms of this Protective Order. All such persons shall be bound by the terms of this Protective Order, and shall not permit disclosure of the records, documents or information contained therein other than pursuant to the terms of this Order. The Court and Court personnel as defined in paragraph 2(c) are expressly excluded from the terms detailed in this paragraph.

4. This Order shall survive termination of this action and the parties, counsel and all persons described in paragraph 2 shall continue to be bound by the terms of this Order. This Court and Court personnel as defined in paragraph 2(c) are expressly excluded from the terms detailed in this paragraph.

5. If either party is acting *pro se* in the future, a motion must be made for this Court to determine the proper procedure, if necessary, to give said parties access to the records to prepare his

or her case.

[**Alt for existing pro se parties:** The records herein shall be kept under seal in the Court's file and may be accessed and reviewed by any party acting *pro se* (without counsel) through the clerk's office; however, the provisions of Paragraph 2(e) shall be in full force and effect, and no party may transcribe in writing any portion of the records reviewed.]

It is so **ORDERED**.

ENTERED this ____ day of _____, 2025.

Judge

I ASK FOR THIS:

Guardian ad litem

SEEN AND _____ :

Counsel for Plaintiff

SEEN AND _____ :

Counsel for Defendant

**VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
OF THE CITY OF VIRGINIA BEACH**

In Re: _____, D.O.B. _____

_____, D.O.B. _____

Case No.: JJ _____ - ____ - ____

JJ _____ - ____ - ____

MOTION TO APPROVE GUARDIAN *AD LITEM* COSTS AND FEES

NOW COMES the Guardian *ad Litem* for the above-referenced children and moves this honorable court to enter an order approving extraordinary fees and/or costs expected to be incurred by the Guardian *ad Litem*, as follows: [Certain examples listed, not inclusive of everything that may pop up in your case]

1. The costs of [car/plane] travel to _____ to conduct a home visit with the Petitioner/Respondent, with estimated costs as follows:
 - a. [range of air fare, rental car costs, hotel stays, etc.]
 - b. [mileage at applicable rate, if long-distance car travel]
 - c. [approximate hours expected to be added to time sheet]
2. Expert witness or private investigator fees [provide documentary written estimates from provider whenever possible]
3. Private process service or costs

WHEREFORE, the Guardian *ad Litem* requests that the Court approve the aforesaid costs and fees to be included in future submission of a List of Allowances, subject to any allocation to the parties that the Court deems appropriate.

Respectfully submitted,

Guardian ad Litem

CERTIFICATE

I hereby certify that this ____ **day of** _____, **20** ____ a true copy of this Motion was mailed via first class mail to the parties to this case.

Guardian ad Litem

**VIRGINIA: IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
OF THE CITY OF VIRGINIA BEACH**

In Re: _____, D.O.B. _____

_____, D.O.B. _____

Case No.: JJ _____ - ____ - ____

JJ _____ - ____ - ____

MOTION TO REHEAR OR RECONSIDER: CHILD CUSTODY

NOW COMES the Guardian *ad Litem* for the above-referenced children and moves this honorable court to set this matter on the docket for re-hearing on the issues of custody and visitation, and as support thereof, states as follows [state with specificity the circumstances for the judge's initial review, the below fact pattern is from a specific case]:

1. The parties and the Guardian *ad Litem*, on behalf of the minor children mutually agreed to the terms of custody and visitation on December 4, 2018.
2. An agreed order was submitted to the Court and entered on December 19, 2018, removing the case from the docket. The order is attached hereto as "Exhibit A."
3. On or about December 24, 2018, serious injuries were observed by the father on the minor child, that appeared consistent with having sustained physical abuse while in the care of Mother.
4. The child made disclosures to Father concerning the physical injuries.
5. Reports were made with Virginia Beach Child Protective Services ("CPS") and the Hampton Police Department.

6. On or about December 27, 2018, Father signed a CPS protective agreement agreeing that the children would not have contact with Mother pending further investigation.
7. The final order entered is no longer in the children's best interests, and the GAL is concerned for the children's health, safety, and welfare if Mother resumes contact with the children.

WHEREFORE, your Guardian *ad Litem* requests that this matter be re-opened and scheduled for hearing on or before _____ (within 45 days of date of entry of the aforesaid order), pursuant to Section 16.1-97.1 of the Code of Virginia, and that both parties be summonsed to appear before this Court for said hearing; and for specific relief in modifying the parenting time set forth in the order.

Respectfully submitted,

Guardian ad Litem

CERTIFICATE

I hereby certify that this _____ day of _____, 20____ a true copy of this Motion to Rehear or Reconsider was mailed via first class mail to the parties to this case.

Guardian ad Litem

§ 16.1-278.4. Children in need of services

If a child is found to be in need of services or a status offender, the juvenile court or the circuit court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.
2. Permit the child to remain with his parent subject to such conditions and limitations as the court may order with respect to such child and his parent.
3. Order the parent with whom the child is living to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and his parent.
4. Beginning July 1, 1992, in the case of any child fourteen years of age or older, where the court finds that the child is not able to benefit appreciably from further schooling, the court may excuse the child from further compliance with any legal requirement of compulsory school attendance as provided under § 22.1-254 or authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of eighteen.
5. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child caring-institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child. Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

6. Transfer legal custody to any of the following:
 - a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child;
 - b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child. The court shall not transfer legal custody of a

child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child. Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

"Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the

child's health, safety and well-being at risk.

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but otherwise meets the definition of "aggravated circumstances."

7. Require the child to participate in a public service project under such conditions as the court prescribes.

1991, c. 534; 1994, c. 865; 1997, c. 463; 1999, cc. 488, 552; 2002, c. 747; 2017, c. 190; 2022, c. 305.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 16.1-278.5. Children in need of supervision

A. If a child is found to be in need of supervision, the court shall, before final disposition of the case, direct the appropriate public agency to evaluate the child's service needs using an interdisciplinary team approach. The team shall consist of qualified personnel who are reasonably available from the appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. A report of the evaluation shall be filed as provided in § 16.1-274 A. In lieu of directing an evaluation be made, the court may consider the report concerning the child of an interdisciplinary team which met not more than ninety days prior to the court's making a finding that the child is in need of supervision.

B. The court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter any order of disposition authorized by § 16.1-278.4 for a child found to be in need of services;
2. Place the child on probation under such conditions and limitations as the court may prescribe including suspension of the child's driver's license upon terms and conditions which may include the issuance of a restricted license for those purposes set forth in subsection E of § 18.2-271.1;
3. Order the child and/or his parent to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child;
4. Require the child to participate in a public service project under such conditions as the court may prescribe; or
5. a. Beginning July 1, 1992, in the case of any child subject to compulsory school attendance as provided in § 22.1-254, where the court finds that the child's parent is in violation of §§ 22.1-254, 22.1-255, 22.1-265, or § 22.1-267, in addition to any penalties provided in § 22.1-263 or § 22.1-265, the court may order the parent with whom the child is living to participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and/or the parent. Upon the failure of the parent to so participate or cooperate, or to comply with the conditions and limitations that the court orders, the court may impose a fine of not more than \$100 for each day in which the person fails to comply with the court order.
b. If the court finds that the parent has willfully disobeyed a lawful process, judgment, decree, or court order requiring such person to comply with the compulsory school attendance law, in addition to any conditions or limitations that the court may order or any penalties provided by §§ 16.1-278.2 through 16.1-278.19, 22.1-263 or § 22.1-265, the court may impose the penalty authorized by § 18.2-371.

C. Any order entered pursuant to this section shall be provided in writing to the child, his parent or legal custodian, and to the child's attorney and shall contain adequate notice of the provisions of § 16.1-292 regarding willful violation of such order.

1991, c. 534; 1992, cc. 837, 880; 1996, c. 45; 1997, c. 210.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 16.1-278.8. Delinquent juveniles

A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278;
2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;
3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile and his parent;
4. Defer disposition for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;
5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;
6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile where the court determines this participation to be in the best interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;
7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;
- 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being

adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at 30-day intervals;

8. Impose a fine not to exceed \$500 upon such juvenile;

9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such terms and conditions as the court may order. The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school. The restricted permit shall be issued in accordance with the provisions of such subsection. However, only an abstract of the court order that identifies the juvenile and the conditions under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the physical custody of the court during any period of curfew restriction. The court shall send an abstract of any order issued under the provisions of this section to the Department of Motor Vehicles, which shall preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order in accordance with its terms.

Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a violation of § 46.2-301.

The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order imposing the curfew;

10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the juvenile was found to be delinquent;

11. Require the juvenile to participate in a public service project under such conditions as the court prescribes;

12. In case of traffic violations, impose only those penalties that are authorized to be imposed on adults for such violations. However, for those violations punishable by confinement if committed by an adult, confinement shall be imposed only as authorized by this title;

13. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the juvenile;

b. A child welfare agency, private organization or facility that is licensed or otherwise authorized

by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the approval of the Director; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the juvenile has residence if other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed 14 days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when such local board consents to the commitment. The board to which the juvenile is committed shall have the final authority to determine the appropriate placement for the juvenile. Nothing herein shall limit the authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282. Any order authorizing removal from the home and transferring legal custody of a juvenile to a local board of social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so state;

14. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon consideration of the results of an investigation completed pursuant to § 16.1-273, commit the juvenile to the Department of Juvenile Justice, but only if (i) he is 11 years of age or older and has been adjudicated delinquent of an act enumerated in subsection B or C of § 16.1-269.1 or (ii) he is 14 years of age or older and the current offense is (a) an offense that would be a felony if committed by an adult, (b) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense that would be a felony if committed by an adult, or (c) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a part of a common act, transaction or scheme;

15. Impose the penalty authorized by § 16.1-284;

16. Impose the penalty authorized by § 16.1-284.1;

17. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon consideration of the results of an investigation completed pursuant to § 16.1-273, impose the penalty authorized by § 16.1-285.1;

18. Impose the penalty authorized by § 16.1-278.9; or

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following

violations: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to § 15.2-1812.2.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to § 15.2-1812.2. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

1991, c. 534; 1992, c. 830; 1994, cc. 859, 949; 1996, cc. 755, 914; 1997, c. 318; 1999, cc. 350, 622; 2000, cc. 954, 978, 981, 988, 1020, 1041; 2004, cc. 325, 462; 2005, c. 810; 2009, cc. 813, 840; 2014, cc. 20, 249; 2017, c. 623; 2021, Sp. Sess. I, c. 115; 2022, cc. 305, 414, 415.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 16.1-292. Violation of court order by any person

A. Any person violating an order of the juvenile court entered pursuant to §§ 16.1-278.2 through 16.1-278.19 or § 16.1-284, including a parent subject to an order issued pursuant to subdivision A 3 of § 16.1-278.8, may be proceeded against (i) by an order requiring the person to show cause why the order of the court entered pursuant to §§ 16.1-278.2 through 16.1-278.19 has not been complied with, (ii) for contempt of court pursuant to § 16.1-69.24 or as otherwise provided in this section, or (iii) by both. Except as otherwise expressly provided herein, nothing in this chapter shall deprive the court of its power to punish summarily for contempt for such acts as set forth in § 18.2-456, or to punish for contempt after notice and an opportunity for a hearing on the contempt except that confinement in the case of a juvenile shall be in a secure facility for juveniles rather than in jail and shall not exceed a period of seven days for each offense.

However, if the person violating the order was a juvenile at the time of the original act and is 18 years of age or older when the court enters a disposition for violation of the order, the judge may order confinement in jail. If a juvenile is found to have violated a court order as a status offender, any order of disposition of such violation confining the juvenile in a secure facility for juveniles shall (a) identify the valid court order that has been violated; (b) specify the factual basis for determining that there is reasonable cause to believe that the juvenile has violated such order; (c) state the findings of fact that support a determination that there is no appropriate less restrictive alternative available to placing the juvenile in such a facility, with due consideration to the best interest of the juvenile; (d) specify the length of time of such confinement, not to exceed seven days; and (e) include a plan for the juvenile's release from such facility. Such order of confinement shall not be renewed or extended.

B. Upon conviction of any party for contempt of court in failing or refusing to comply with an order of a juvenile court for spousal support or child support under § 16.1-278.15, the court may commit and sentence such party to confinement in a jail, workhouse, city farm, or work squad as provided in §§ 20-61 and 20-62, for a fixed or indeterminate period or until the further order of the court. In no event, however, shall such sentence be imposed for a period of more than 12 months. The sum or sums as provided for in § 20-63 shall be paid as therein set forth, to be used for the support and maintenance of the spouse or the child or children for whose benefit such order or decree provided.

C. Notwithstanding the contempt power of the court, the court shall be limited in the actions it may take with respect to a child violating the terms and conditions of an order to those which the court could have taken at the time of the court's original disposition pursuant to §§ 16.1-278.2 through 16.1-278.10, except as hereinafter provided. However, this limitation shall not be construed to deprive the court of its power to (i) punish a child summarily for contempt for acts set forth in § 18.2-456 subject to the provisions of subsection A or (ii) punish a child for contempt for violation of a dispositional order in a delinquency proceeding after notice and an opportunity for a hearing regarding such contempt, including acts of disobedience of the court's dispositional order which are committed outside the presence of the court.

D. In the event a child in need of services is found to have willfully and materially violated for a

second or subsequent time the order of the court pursuant to § 16.1-278.4, the dispositional alternatives specified in subdivision A 9 of § 16.1-278.8 shall be available to the court.

E. In the event that a child in need of supervision is found to have willfully and materially violated an order of the court pursuant to § 16.1-278.5, the court may enter any of the following orders of disposition:

1. Suspend the child's motor vehicle driver's license;
2. Order any such child 14 years of age or older to be (i) placed in a foster home, group home, or other nonsecure residential facility or, (ii) if the court finds that such placement is not likely to meet the child's needs, that all other treatment options in the community have been exhausted, and that secure placement is necessary in order to meet the child's service needs, detained in a secure facility for a period of time not to exceed seven consecutive days for violation of any order of the court arising out of the same petition. The court shall state in its order for detention the basis for all findings required by this section. In addition, any order of disposition for such violation confining the child in a secure facility for juveniles shall (a) identify the valid court order that has been violated; (b) specify the factual basis for determining that there is reasonable cause to believe that the child has violated such order; (c) state the findings of fact that support a determination that there is no appropriate less restrictive alternative available to placing the child in such a facility, with due consideration to the best interest of the child; (d) specify the length of time of such confinement, not to exceed seven days; and (e) include a plan for the child's release from such facility. Such order of confinement shall not be renewed or extended. When any child is detained in a secure facility pursuant to this section, the court shall direct the agency evaluating the child pursuant to § 16.1-278.5 to reconvene the interdisciplinary team participating in such evaluation as promptly as possible to review its evaluation, develop further treatment plans as may be appropriate and submit its report to the court for its determination as to further treatment efforts either during or following the period the child is in secure detention. A juvenile may only be detained pursuant to this section in a detention home or other secure facility in compliance with standards established by the State Board. Any order issued pursuant to this subsection is a final order and is appealable to the circuit court as provided by law.

F. Nothing in this section shall be construed to reclassify a child in need of services or in need of supervision as a delinquent.

1977, c. 559; 1983, c. 501; 1985, cc. 1, 260; 1987, c. 632; 1988, c. 771; 1989, c. 725; 1990, c. 110; 1991, c. 534; 1993, c. 632; 1994, c. 21; 2000, c. 978; 2016, c. 626; 2020, c. 593.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.