

The Juvenile and Domestic Relations District Court

I. General Information

The juvenile and domestic relations district (JDR) courts in Virginia are primarily governed by the statutes found in [Chapter 11 of Title 16.1 of the Code of Virginia \(Virginia Code sections 16.1-226 through 16.1-361\)](#). These statutes set forth information about the kinds of cases that are heard by the JDR courts, how those cases should proceed, and what authority is given to the judges of the JDR courts when they decide cases. This pamphlet provides a brief summary of that information and is not intended to provide legal advice or formal interpretation of law. If you need legal advice, you should contact an attorney.

The JDR courts are district courts, which in Virginia means that they are not courts of record and there are no jury trials. All cases are heard and decided by the judge. Parties to a case can appeal the final decisions of the JDR court to the circuit court, which is a court of record and may involve a jury trial.

The JDR courts handle cases involving:

- Children accused of delinquent acts, traffic infractions, or status offenses
- Children in need of services or supervision
- Children who have been subjected to abuse or neglect, or abandoned
- Children whose custody, visitation, support, or parentage is before the court
- Children for whom relief of custody or termination of parental rights is sought
- Children in foster care
- Children seeking emancipation or work permits
- Children whose eligibility for federal or state benefits requires certain findings by the court
- Family or household members who have been subjected to or accused of abuse
- Adults accused of child abuse or neglect, or of offenses against a family or household member
- Spouses seeking support after separation
- Enforcement of support orders
- Court-ordered rehabilitation services
- Court consent for certain medical and mental health treatments
- Court-ordered blood testing of minors

Definitions

In Virginia, the terms listed below are defined as follows:

Child: Any person under the age of eighteen.

Delinquent Act: An act that has been designated as a crime or is a violation of a court order.

Delinquent Child: A child who commits a delinquent act.

Child in Need of Services: A child whose behavior, conduct, or condition presents or results in a serious threat to the child's well-being or physical safety of another person.

Child in Need of Supervision: A child who is subject to mandatory school attendance but is habitually absent from school without a valid excuse; remains away from his family or guardian; or escapes or remains away from a residential care facility ordered by the court.

Abused and Neglected Child: A child:

- Whose parent or caregiver creates or inflicts a physical or mental injury upon the child
- Whose parent or caregiver threatens to create or inflict a physical or mental injury upon the child
- Whose parent or caregiver creates a risk of physical or mental injury to be inflicted on the child
- Whose parent or caregiver refuses to provide for the child's health and well-being
- Whose parent or caretaker abandons the child
- Whose parent or caretaker commits or allows to be committed any sexual act on the child in violation of law
- Who is without parental care caused by the unreasonable absence or the mental or physical incapacity of the child's parent or caretaker
- Whose parent or caretaker leaves the child alone with an unrelated person who the parent or caretaker knows has been convicted as a violent sexual predator
- Who has been identified as a victim of sex trafficking

Adjudication: The court's decision of the case following the presentation of evidence. For example, the case is adjudicated when the judge decides whether a child is guilty of a delinquent act or whether a child was abused or neglected.

Disposition: The court's decision as to what should happen to the parties following adjudication. For example, a delinquent child's "sentence" or whether a child removed from his or her parents should remain in foster care.

Court Clerk

Each JDR court has a clerk's office that processes all case papers, keeps court records, and provides information to the people involved in a case (to the extent permitted by law). Anyone wishing to make a witness appear at a court hearing may request the issuance of a subpoena (a document used to require a person to come to the court hearing) at the court clerk's office. While court personnel are not permitted to offer legal assistance, they can provide general procedural information. Because of confidentiality laws, the clerk's office can provide only limited information about a case to those people involved with the case.

Court Service Unit

Associated with the JDR court is a court service unit, which serves the court and facilitates the supervision, rehabilitation and treatment as needed by those who come before the court. The court service unit's essential functions include:

- **Intake.** Reviews all complaints against juveniles and determines whether there are enough facts to involve the court. If so, the intake officer may either proceed informally without filing a petition or may authorize the filing of a petition to bring the matter before the judge. The intake officer may also place the child in secure detention if the offense requires such security prior to a detention hearing by a JDR court judge. Intake does not handle criminal charges against adults; such cases may be started by contacting law enforcement or by asking for a warrant from a magistrate. In addition, the court service unit provides intake services for all initial petitions filed in the JDR court, including those for custody and visitation.
- **Investigation.** Conducts all background studies required by the judge in accordance with regulations issued by the Virginia Board of Juvenile Justice. Some of these studies include an examination of a child's family, social and educational history. Such studies may be used by the court as a factor in determining the appropriate disposition and by the probation staff in forming a services and supervision plan.
- **Probation.** Provides community supervision and case management for delinquent children placed on probation.
- **Parole.** Supervises and provides community-based case management services to children in direct state care and those recently released from state institutional care.
- **Residential Care.** Supervises children being held in detention, shelter care, and post dispositional probation facilities. In most localities, the staff of these facilities are employees of the localities served by the court who work cooperatively with the staff of the local court service unit.

Court personnel, including court clerks and deputy clerks, and court service unit personnel, are not lawyers and are not permitted or allowed to offer legal advice. Legal questions should be directed to your attorney.

Other Agencies

Local departments of family or social services are frequently involved in certain types of cases. They perform the initial investigation in child abuse and neglect and relief of custody cases. Children may be committed to such agencies when they are removed from home. Other agencies may be ordered by the judge to provide such services to the child and his or her family as the judge deems appropriate.

Lawyers

The following persons have the right to be represented by a lawyer in the JDR court:

- A child alleged to be delinquent
- A child alleged to be in need of services
- A child alleged to be in need of supervision
- A child alleged to be abused or neglected
- A child who is the subject of an entrustment agreement, a request for relief of custody, or a parentage controversy
- An adult before the court on criminal charges
- An adult faced with loss of their parental rights
- An adult whose child is alleged to have been abused or neglected
- Any other person whom the court decides requires a lawyer's services

The court will appoint a *guardian ad litem* to represent children (i) who are alleged to be abandoned, abused, neglected, or otherwise dependent; (ii) who are subject of an entrustment agreement (in which the parents voluntarily transfer care and custody of their child to an agency); (iii) who are placed in the care and custody of a local agency; (iv) who are subject of a court proceeding to terminate their parents' residual parental rights; and (v) whose parents desire to be relieved of care and custody of the child. Guardians ad litem are lawyers who undergo special training and certification to represent the best interests of children involved in these types of cases. More information about guardians ad litem for children can be found on Virginia's Judicial System website at: www.vacourts.gov/courtadmin/aoc/cip/programs/gal/children/home.html.

Adults and children involved in some cases may waive (give up the right to) representation by an attorney. Children and their parents must knowingly waive representation in writing. The judge must agree that this waiver is consistent with the interests of the child. If the child is charged with an offense that would be a felony if committed by an adult (a crime punishable by more than 12 months in jail), then the child must consult with an attorney and both must sign a waiver to be filed with court records of the case. The court must find that this waiver is made freely and voluntarily.

Any party who wants to hire a lawyer and has reasonably been unable to do so must file a motion asking the court for a continuance (a temporary delay of the hearing) before the court date. This must be done before the judge hears evidence in the case.

Petitions, Summons, Subpoenas, and Warrants

A petition is a legal document containing the written statement that brings the case into court. The petition contains facts concerning the case and requests a hearing to determine the truth of these facts and to take whatever action is appropriate and permitted by law.

A summons is a legal document requiring a person to appear in court at the date and time stated on the summons. The petition is delivered with the summons to people who are required to be in court as parties in the case. No petition is required when a child is arrested and released on a summons written by an arresting officer.

A subpoena is a legal document delivered to witnesses who are required to be in court, telling them when and where they are required to appear. A subpoena duces tecum is a legal document delivered to persons to provide documents or written records to the requesting party in a pending court matter.

A warrant is a legal document accusing a person of committing crimes, requiring that the person be arrested, be brought before a magistrate for a pretrial release (bail) hearing, and be required to appear in court to answer the accusations.

When Called to Court

All persons required to appear before the JDR court should arrive at the time and place stated on the petition, summons, bail form, or subpoena. It is important that everyone involved in a case be ready when the case is called into the courtroom. The court does not have child care services; therefore, the only children who should be brought to court are those children involved in the case or whose presence has been requested or required by the court, an attorney, or a probation officer.

Privacy and Confidentiality

JDR courts differ from other courts in their duty to protect the confidentiality and privacy of children and their families who have legal matters before the court. The general public is excluded from all JDR court hearings, unless the judge authorizes a person to be present. Exceptions include cases where the child is 14 years of age or older at the time of the offense and is alleged to have committed an offense that would be a felony if committed by an adult, and cases involving adults charged with a crime. However, the judge may close any proceeding to the public for good cause shown.

Records of juvenile cases, both delinquency (where a child is charged with an offense) and civil (custody, visitation, support, and child dependency), are confidential and cannot be inspected by the general public. Exceptions include cases where a child 14 years of age or older at the time of the offense is found delinquent for an act that would be a felony if committed by an adult, and cases where an adult is charged with a crime; records of these cases are open to inspection by the general public. However, a judge may seal (make confidential) a case or record within a case.

II. Juvenile Delinquency and CHINS Cases; Juvenile Traffic Cases; Adult Criminal Cases

Detention

A child may be taken into immediate custody if one of the following applies:

- A judge, clerk at judge's direction, or intake officer issues a detention order requiring the child to be taken into custody.
- A child is alleged to be a child in need of services or supervision and there is clear and substantial danger to the child's life or health, or this is necessary for the child's appearance before the court.

- A child commits a crime that is witnessed by a police officer or a crime that would be a felony if committed by an adult.
 - A child commits a misdemeanor offense involving shoplifting, assault and battery, or carrying a weapon on school property.
 - A child has escaped from lawful incarceration or a court ordered residential home, facility, or placement by a child welfare agency.
 - A child is believed to be in need of inpatient mental health treatment.

If not immediately released by an intake officer or magistrate, the child may be held in custody (detention) until he or she can be brought before the judge for a detention hearing. The child's detention hearing should be held the next day the court sits within the city or county but no longer than 72 hours after the child was taken into custody. Prior notice of the detention hearing must be given to the child's parent or guardian, and to the child if over 12 years of age. A detention hearing is not a trial but is a hearing to determine whether the child should remain in detention.

The child has the right to be represented by a lawyer at the detention hearing, the right to remain silent regarding the charge in the petition, and the right to be informed of the contents of the petition. An attorney will be appointed to the child before the detention hearing if the child's parent or guardian has not hired one.

The judge decides whether to hold the child in secure detention or release the child to a parent, guardian or persons having custody of the child, or to shelter care. Shelter care is defined as the temporary care of children in a physically unrestricted environment¹.

If the judge releases the child from detention, the judge may set bail and/or certain rules and conditions to be followed by the child until the date of the trial.

The judge may order the child be held in detention if the judge believes that there is probable cause the child committed the alleged act and:

- the child is charged with violation of probation or parole; or
- the child is charged with a class 1 misdemeanor or an offense that would be a felony if committed by an adult and (i) is a threat to his or herself or others or the property of others, or (ii) has threatened not to come to court or has failed to appear to court within the past 12 months.

While the child is in a detention home or shelter placement, parents or guardians wishing to visit may do so only during permitted visiting hours. Parents or guardians should find out in advance of a visit: the hours of visitation, the documentation needed, dress code, the number of visitors allowed at one time, and any restrictions concerning who is allowed to visit.

Adjudicatory Hearing (Trial)

The actual trial in juvenile delinquency cases is called the adjudicatory hearing. It is at the adjudicatory hearing that the judge determines whether the facts as stated in the petition or warrant

¹ Shelter care facilities may not be available in some jurisdictions.

are true. The judge may continue (temporarily postpone) a case to allow all parties time to obtain a lawyer or for any other reason necessary to have a fair trial. A child accused of a crime has the following rights at the adjudicatory hearing:

- The right to be represented by a lawyer to the extent provided by law;
- The right to have witnesses appear on his or her behalf;
- The right to subpoena (to require) witnesses to appear;
- The right to confront and cross-examine (question) witnesses testifying against him or her; and
- The right against self-incrimination (to answer questions or make statements tending to show guilt and have them used against him or her).

During the adjudicatory hearing in delinquency cases, all charges must be proven beyond a reasonable doubt. If the judge finds the child delinquent, the case is usually continued to another day for the judge to make a disposition decision (sentencing). The disposition decision is not always made immediately because the judge may require information about all aspects of the child's background, including prior offenses and personal history, before determining what corrective measures to take with the child. Dispositions in traffic cases, however, are usually made immediately at the end of the adjudicatory hearing.

Disposition

The court may order various dispositions for delinquency convictions. If the child is placed on probation under the supervision of the probation officer, the child and the child's parent(s) or legal guardian must cooperate with the probation officer and rules of probation. The family and guardians of the child may be ordered by the court to participate in various programs or services. Parents or guardians violating this court order may be subject to fines and/or jail. Children violating the terms of probation may also be subject to a new charge and new punishments.

Certification or Transfer to Circuit Court for Trial as an Adult

A case involving a child 14 years or older accused of a felony may be certified or transferred to circuit court where the child would be tried as an adult. A hearing to determine whether to transfer the case cannot occur unless the child's parent or the child's attorney is notified of the transfer hearing.

Transfer to Circuit Court

A case involving a child 14 years or older at the time of the alleged felony offense(s) may be transferred to the circuit court to be tried as an adult. Some felony charges require that a judge make the decision whether to hear the case in JDR court or circuit court. The Commonwealth must provide written notice requesting the transfer of the child's felony case(s) to circuit court to the child's attorney or to the child and one parent or legal guardian. A judge will hold a hearing to determine whether probable cause exists regarding the offense(s) charged and whether transfer of the case to circuit court is appropriate. Some factors the judge may consider when determining whether the case should be heard in circuit court include: the child's previous court involvement, competency, school record information, age, and emotional maturity.

Statements made by the child during the transfer hearing may not be used as evidence of the offense at a later court hearing and trial, but such statements may be used if the child testifies during the trial.

Both the Commonwealth and child may appeal a transfer decision within 10 days of the transfer hearing. Any child convicted in circuit court will be treated as an adult in all future criminal cases.

Certification to Circuit Court

If a child was 14 years or older and charged with a violent felony, the Commonwealth may certify the charge to circuit court for trial. Written notice to the child's attorney or to the child and one parent or legal guardian must be provided. In these cases, the judge only determines whether there is probable cause to believe that the child committed the alleged crime. A list of serious felony charges that may be certified to circuit court can be found in Virginia Code section 16.1-269.1C. If the judge finds probable cause that the child committed the crime(s) alleged, the child's case will be tried in circuit court.

The crimes of capital murder, first or second degree murder, or aggravated malicious wounding are automatically certified to the circuit court if the child is 14 years or older at the time of the offense and the judge has found probable cause that the juvenile committed the offense(s) charged. No Commonwealth request is needed.

Traffic Cases

Cases involving children accused of traffic violations are heard in the JDR court. Certain violations may be prepaid *if* prepayment is permitted by the chief judge of that court *and* if the child wishes to plead guilty and not contest the charge. The traffic summons should be examined to see if the arresting officer has marked that trial may be waived (given up) to permit prepayment. If prepayment is permitted, the Pretrial Waiver and Prepayment Instructions found on the summons may be followed. Payments of fines and costs may be made after the case is heard in court using the Virginia Judiciary Online Payment System, which may be accessed at www.vacourts.gov/caseinfo/tickets.html.

Adult Criminal Cases

Adult criminal cases in the JDR court are tried under the same standards and procedures that are applied in misdemeanor (criminal offenses that are not felonies) cases heard in the general district court, where most other adult misdemeanors are tried. Adult criminal cases heard by the JDR court generally involve offenses committed against children or family or household members.

Adults charged with committing felonies against children or family or household members are brought into the JDR court after arrest for a preliminary hearing. This hearing is held to determine if there is probable cause to believe that the accused adult committed the felony. If probable cause is found, the case is transferred to circuit court; otherwise the case is dismissed.

Expungement (Destruction of Court Records)

Generally, court records of proceedings concerning a child will be destroyed on January 2 of each year if the child has reached the age of 19 years and 5 years have elapsed since the date of the last hearing before the court. Traffic records will be destroyed when the child is 29 years old. If the child was found guilty of a delinquent act, which would be a felony if committed by an adult, the records will be retained.

III. Custody and Support

Custody

Disputes about the custody or visitation of a child are usually heard in the JDR court². In such cases, the court will enter an order with provisions for custody and visitation necessary to protect the best interests of the child.

Once a court enters an order of custody and visitation in a case, the custody and visitation arrangement cannot be changed without further order of the court. Any party may seek enforcement of the court order if another party fails to follow the court order.

Sometimes, the JDR court may appoint a lawyer to serve as the child's guardian ad litem in a custody and visitation case. This appointment may be made if the parties are not represented by an attorney or if the judge determines that the child's best interests would not otherwise be represented.

Support

Under Virginia law, parents or spouses who fail in their obligations to support and maintain their dependents may be required by the court or the Division of Child Support Enforcement (DCSE) to provide such support.

A person seeking support can either request DCSE to open a support case or file a petition with the JDR court to seek child or spousal support. To request DCSE to open a case, you can contact the DCSE by calling toll-free 1-800-468-8894 or visit the DCSE website at <https://mychildsupport.dss.virginia.gov>. To file your own support petition with the JDR court, you can speak with a local court service unit intake officer at the JDR court. The local court service unit intake officer will be able to explain the available options to seek support.

In the JDR courts, either a civil support case or a criminal desertion/non-support case may be filed. In a civil case, any spouse or parent found by the court to owe a duty to provide support and maintenance may be ordered to make periodic payments in a manner prescribed by the court and may be required to post a performance bond. In criminal cases, any spouse or parent found by the

² Child custody cases between parents may also be heard by the circuit court if the case is part of a divorce matter between the parents.

court to have failed in his/her duty to provide support and maintenance is guilty of a misdemeanor and is subject to a fine of up to \$500 and up to 12 months in jail. Persons failing to make support payments may lose their professional or occupational license or their driver's license. In place of or in addition to paying a fine and/or being sent to jail, a judge may order the spouse or parent to make certain periodic payments in a manner prescribed by the court. The judge may then release the negligent spouse or parent on the condition that he/she comply with all conditions of the court's order.

Any person subject to such an order who continues to fail to provide support in the manner ordered by the court may be jailed or be required to post a bond. The court may (and in some cases must) require that support payments be deducted from the earnings of the spouse or parent who fails to pay support. Persons summoned to court who fail to appear may also be charged with contempt of court and subject to immediate arrest; in such case, the support hearing would continue in his or her absence.

IV. Child Dependency (Foster Care)

Child dependency³ cases may include the following situations:

- The child is removed by a local department of family or social services due to child abuse or neglect. These cases are typically initiated by the local agency's filing of a petition for an emergency or preliminary removal order, or a preliminary child protective order.
- A parent voluntarily places a child in the custody of the local department of family or social services under a special agreement between the parent and the agency called an "entrustment agreement."
- A parent voluntarily places a child in the physical custody of the local department of social or family services, but the parent retains legal custody. This type of arrangement is often used for placement in a residential treatment facility for mental health or substance abuse treatment.
- A parent files a petition for relief of custody.
- A court finds that a child is a Child in Need of Services and transfers custody of the child to the local department of family or social services. A child found to be a child in need of supervision or delinquent may also be removed from his or her parents or guardians and placed in the custody of a local department of family or social services.

Once a child has been removed from the home and placed in the custody of a local department of family or social services, the case proceeds as a foster care case in the JDR court. A more detailed description of these proceedings can be found in the Handbook for Parents and Guardians in Child Dependency Cases, available online at:

www.vacourts.gov/courtadmin/aoc/cip/resources/handbook_for_parents_and_guardians.pdf. In child dependency cases, the JDR court will appoint lawyers for the parents or guardians, a guardian ad litem for the children, and, in many localities, a Court-Appointed Special Advocate ("CASA"), who is a specially-trained volunteer who gathers information about the case and prepares a report

³ These are called "child dependency" cases because the child, due to abuse, neglect, or other circumstances, can no longer remain safely in their home with their parent(s) or guardian(s) and therefore must depend on the local department of family or social services for his or her safety and care.

for submission to the court⁴.

V. Appeals

Parties to a civil case and the defendant in a criminal or delinquency case heard in JDR court have a right to appeal the case to the circuit court. Certain rules and deadlines apply to appeals of JDR court decisions. If you do not understand the appeal process, you should consult an attorney. The court can provide only limited information about the appeal process.

⁴ More information about the CASA program can be found at <https://www.dcjs.virginia.gov/juvenile-services/grants/casa>.

VIRGINIA'S JUDICIAL SYSTEM

Notice Regarding the Americans with Disabilities Act and Requests for Accommodations by Persons with Disabilities

The Americans with Disabilities Act (ADA) of 1990 was enacted to ensure that all qualified individuals with disabilities enjoy the same opportunities that are available to persons without disabilities. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications. The ADA directly affects state courts as providers of public programs and services. In accordance with the requirements of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq., the Supreme Court of Virginia and the courts of the Commonwealth of Virginia (collectively referred to as "Virginia's Judicial System") will not discriminate against qualified individuals with disabilities on the basis of disability in its services, programs, or activities.

Virginia's Judicial System does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations promulgated by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.

Effective Communication: Virginia's Judicial System will generally, upon request, provide appropriate aids and services for qualified persons with disabilities so they can participate equally in Virginia's Judicial System programs, services, and activities, including qualified interpreters, and other ways of making information and communications accessible to people who have speech, hearing, or vision impairments.

Modifications to Policies and Procedures: Virginia's Judicial System will make all reasonable modification to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services, and activities. For example, individuals with service animals are welcomed in Virginia's courts, even where pets are generally prohibited.

Requests for Accommodation: A request for accommodation should be made to the relevant clerk if the request relates to a pending case or activity of a particular court. Otherwise, the request should be made to the ADA Coordinator at the address below. Procedures for making a request, as well as a form for doing so, are available through the ADA Coordinator and on Virginia's Judicial System website, www.vacourts.gov.

No requirement to alter programs and services: The ADA does not require Virginia's Judicial System to take any action that would fundamentally alter the nature of its programs or services or impose an undue financial or administrative burden.

Complaints regarding accessibility: Complaints concerning a program, service, or activity of a circuit court clerk's office should be directed to that clerk. Other complaints will be handled pursuant to grievance procedures adopted by the Office of the Executive Secretary. The procedures are available through the ADA Coordinator, and on Virginia's Judicial System website, www.vacourts.gov.

No surcharge: Virginia's Judicial System will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public but are not accessible to persons who use wheelchairs.

Questions about this Notice – Please submit your questions to: ADA Coordinator
Renée Fleming Mills, Ph.D.
Office of the Executive Secretary
Supreme Court of Virginia
100 N. 9th Street
Richmond, Virginia 23219
Fax: 804-786-0109
E-mail: ADACoordinator@vacourts.gov