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In The
Supreme Court of Virginia

RECORD NO. 040470



DIANA MARIE AUSTIN,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY

COMMONWEALTH OF VIRGINIA

V. NO. 00 07 0358

DIANA MARIE AUSTIN DOB: MARCH 15, 1986 SS# 231 39 1966

On June 6, 2000, came the attorney for the Commonwealth, the defendant, Diana Marie Austin, led to the bar in the custody of the jailer of this County, Jeff Austin, father of the defendant, Julie Flint, mother of the defendant, and came also Timothy W. Allen, attorney for the defendant, previously appointed. The parties appear upon the defendant's appeal of a sentencing decision of the Juvenile and Domestic Relations District Court of Franklin County.

On January 10, 2000, the defendant was tried in the Juvenile and Domestic Relations District Court of Franklin County, and was found guilty of three charges of violation of probation and two charges of auto larceny. The defendant was Ordered to be committed to the Department of Juvenile Justice for an indeterminate period. On March 9, 2000, a commitment review was held in the Juvenile and Domestic Relations District Court of Franklin County, and that Court determined that the juvenile should remain in the Department of Juvenile Justice for an indeterminate period, which sentence the defendant, by her attorney, appealed on March 15, 2000, pursuant to Virginia Code Section §16.1-289.

And on June 6, 2000, after hearing the evidence and argument of counsel, this Court affirms the finding of the Juvenile and Domestic Relations District Court of Franklin County, and **ORDERS** the defendant be re-committed to the Department of Juvenile Justice for an indeterminate period. The Franklin County Juvenile Court Service Unit shall maintain contact with the juvenile during her commitment.

The Clerk of this Court shall mail or deliver certified copies of this Order to Timothy W. Allen, Esquire, to Martha Phillips, Juvenile Probation Officer, and to the attorney for the Commonwealth.

ENTER: 6/19/2000

William N. Alexander, II
WILLIAM N. ALEXANDER, II, JUDGE

4633.H

00 JUN 19 10:24

FILED/FRANKLIN CO.
CLERK OF CIRCUIT COURT
ALICE S. HALL

6/20/2000
copy
twa
m
CK
S. Lee

6/20/2000
K. F.
J. Lee

IN THE JUVENILE & DOMESTIC RELATIONS DISTRICT COURT
FOR THE COUNTY OF FRANKLIN
TWENTY-SECOND JUDICIAL DISTRICT

COMMONWEALTH OF VIRGINIA

PAROLE ORDER

VS.

00 07 0358

Diana Austin

It appearing to the Court that the above-named defendant has been heretofore placed on supervised parole; for a period of time as designated: indeterminate, the Court does now ORDER, pursuant to the authority of Section 16.1-293/294, Code of Virginia, said defendant be placed under the following conditions and restrictions during said parole, to-wit:

1. APPOINTMENTS & INSTRUCTIONS - Keep all appointments with Parole Officer (required 24-hour advance postponement with Parole Officer approval) and obey all lawful instructions of Parole Officer.
2. VIOLATION OF LAW - Your Parole may be revoked upon a conviction of a subsequent criminal offense.
3. SCHOOL/EMPLOYMENT - You must report to school or work (whichever is designated by Parole Officer) every day and apply yourself, and any suspension or dismissal may result in a revocation.
4. CHANGE OF RESIDENCE - Subject to Court approval only.
5. CURFEW: Sun.-Thurs.: 9:00 P.M. (unless working, with parents, or at a school)
Fri.-Sat.: 10:00 PM
6. ADDITIONAL RULES (if applicable) - (see additional page).

FILED/FRANKLIN COUNTY
CLERK OF DISTRICT COURT
ALICE S. HALL
01 OCT -3 PM 12:15

NOTE: ANY REVOCATIONS MAY RESULT IN YOUR IMMEDIATE ARREST AND INCARCERATION. ALSO, FAILURE TO COMPLY WITH THE TERMS OF PROBATION OR PAROLE COULD RESULT IN AN OUT-OF-HOME PLACEMENT.

Enter this 25th day of September, 2001.

William W. Under
Judge

Seen & Process Executed:

X Diana Austin
Parolee

Date: 9-25-01 Time: 10:00 A.M.

Jeff Austin
Parent

Martha Phillips
Parole Officer

Parent

10.3.01
copy filed Phil: 11:05
m.

PAROLE RULES (Cont.)

6. Use of and/or possession of alcoholic beverages, and/or illegal or non-prescription drugs, is prohibited.
7. Under no condition are you to leave the jurisdiction (Franklin County) without permission of your parole officer.
8. Submit to random drug screens at the discretion of the court and/or its officers and remain drug free.
9. You may not stay away from your home overnight without the permission of your parole officer.

10. Participate w/ the STABLE Program or any other program recommended
by substance abuse probation officer.

11. _____

12. _____

X Diana Austin
Parolee

9-25-01
Date

J H Austin
Parent

Judge

Parent

Martha A. Phillips
Parole Officer



*Bring her back
to Court
2/1/02
W Alexander*

COURT SERVICE UNIT DIRECTOR
HARRY W. AYER

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF JUVENILE JUSTICE
COURT SERVICE UNIT
Twenty-Second Juvenile and
Domestic Relations District Court

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IN ANSWER REPLY TO:

January 31, 2002

The Honorable Judge W. A. Alexander, II
Franklin County Circuit Court
Courthouse
Rocky Mount, VA 24151

RE: Diana Austin

Dear Judge Alexander:

In December 2001, I met with you in regards to Diana transferring from the high school to the Alternative Education Program. This was to allow her to work on her G.E.D.

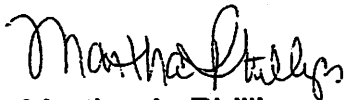
On January 30, 2002, Ms. Holley called to let me know Diana had not been attending school on a regular basis. I talked with Diana's grandmother, Ms. Bolling, to see if she was sick. Ms. Bolling thought she had been attending everyday.

After reviewing school attendance, Diana has skipped school on January 16, 17, 29 and 30.

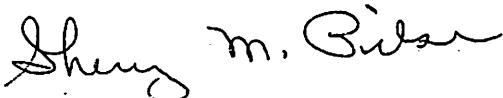
Judge William A. Alexander, II
January 31, 2002
Page 2

Please let me know how you would like me to proceed.

Respectfully submitted,



Martha A. Phillips
Probation Officer



Sherry M. Pilson
Probation Supervisor

MAP/ds

PETITION

Commonwealth of Virginia VA. CODE §§ 16.1-262; 16.1-263

Case No.

DATE OF HEARING

FRANKLIN COUNTY CIRCUIT COURT

In re a Child under eighteen years of age

AGE AT TIME OF OFFENSE: 15 YRS

CHILD'S NAME	SSN	DATE OF BIRTH	AGE	SEX	RACE
1. AUSTIN, DIANA MARIE	231-39-1968	2. 03/15/86	13 YRS	M. F. F	W
CHILD'S ADDRESS	TELEPHONE NO.				
4. 15 KNOLLWOOD DR. C/O JOYCE BOLLING ROCKY MOUNT, VA 24151					
FATHER'S NAME AND ADDRESS	SSN	TELEPHONE NO.			
5. AUSTIN, JEFF		540-483-9006			
MOTHER'S NAME AND ADDRESS	SSN	TELEPHONE NO.			
6. 40 NORTHSIDE DR. ROCKY MOUNT, VA 24151		540-489-5003			
GUARDIAN/LEGAL CUSTODIAN OR PERSON IN LOCO PARENTIS AND ADDRESS	TELEPHONE NO.				
7. 361 FALCON RIDGE RD. ROCKY MOUNT, VA 24151					
OTHER(S) NAME AND ADDRESS	TELEPHONE NO.				
8.					
OTHER(S) NAME AND ADDRESS	TELEPHONE NO.				
9.					
10. Child held in CUSTODY <input type="checkbox"/> Yes <input type="checkbox"/> No					
11. Place of Detention or Shelter Care					
12. Date and Time Taken into Custody					
13. Date and Time Placed in Detention or Shelter Care					
14. The above information is not known to the petitioner: No(s).					

I, the undersigned petitioner, state under oath to the best of my knowledge, that the above-named child is within the review of the Juvenile and Domestic Relations District Court Law in that, within this city/county, the child:

..... SHE HAS VIOLATED THE CONDITIONS OF HER PAROLE ENTERED ON 09/25/01

..... [FRANKLIN CO. CIRCUIT COURT] TO-WIT: RULE #5 AND #9. [SUBJECT LEFT THE

..... COMM. OF VA.] IN VIOLATION OF SECTION 16.1-291 OF THE 1950 CODE OF

..... VIRGINIA AS AMENDED.

WHEREFORE, the Petitioner requests that the child and the persons having his or her custody and control be summoned to appear before this Court, and that this Court enter such orders and judgments as the Court deems fit and proper in accordance with the law and which will serve the purpose and intent of the Juvenile and Domestic Relations District Court Law.

02/20/02 MARTHA A. PHILLIPS

DATE

PETITIONER'S NAME (PRINT OR TYPE)

PETITIONER'S SIGNATURE

PROBATION OFFICER DJJ-DIST. 22, #2316 ROCKY MOUNT VA 24151

PETITIONER'S ADDRESS AND TELEPHONE NUMBER (COURT COPY ONLY)

Sworn/affirmed and signed before me on 02/20/02

☐ INTAKE OFFICER☐ NOTARY PUBLIC (My commission expires:

Filed by:

☐ INTAKE OFFICER ☐ ATTORNEY

DATE

**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.

45
VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

COMMONWEALTH OF VIRGINIA

VS.

DIANA MARIE AUSTIN

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MOTION TO DISMISS
Case No. 00-07-0358

The defendant, Diana Marie Austin, by counsel, moves to dismiss the proceedings in this Court against her for violation of parole and states as follows:

1. The Franklin County Juvenile and Domestic Relations District Court reviewed its order of commitment and continued defendant's commitment to the Department of Juvenile Justice by order entered March 9, 2000.

2. On appeal, this Court affirmed the findings of the Juvenile Court and ordered the defendant's recommitment to the Department of Juvenile Justice for an indeterminate period by order entered June 19, 2000.

3. The defendant was placed on parole supervision following her release from commitment to the Department.

4. Defendant is now before this Court based on allegations of violation of parole.

5. The exclusive original jurisdiction over this matter is with the Franklin County Juvenile and Domestic Relations District Court. Virginia Code Section 16.1-296, 16.1-297, 16.1-293, 16.1-291, 16.1-260, and 16.1-241.

02 FEB 27 P4:47

FILED/FRANKLIN CO.
CLERK OF CIRCUIT COURT
ALICE S. HALL

6. Copies of the relevant provisions of the Code of Virginia are attached and incorporated by reference.

Wherefore, defendant Diana Marie Austin moves to dismiss these proceedings for lack of subject matter jurisdiction.

DIANA MARIE AUSTIN


By:


Counsel

John T. Boitnott
Price Perdue Building, Suite 301
5 East Court Street
Rocky Mount, Virginia 24151
Virginia State Bar No. 21910
Telephone No. (540)483-8822
Counsel for Defendant

CERTIFICATE

I certify I mailed or otherwise delivered a true copy of the foregoing pleading to counsel of record on February 27, 2002.


Counsel

Title 16.1 Courts Not of Record
Chap. 11 Juvenile and Domestic Relations District Courts, §§ 226 - 361
Art. 11 Appeal, §§ 296 - 298

§ 16.1-296. Jurisdiction of appeals; procedure. —

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within thirty days from entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or § 16.1-273.

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8; the provisions of § 16.1-302 shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

F. In all other cases on appeal, proceedings in the circuit court shall conform to the equity practice where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to §

16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court.

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal. An appeal will not be perfected unless such appeal bond as may be required is filed within thirty days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal.

This subsection shall not apply to release on bail pursuant to other subsections of this section or § 16.1-298.

I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter.

J. In any case which has been referred or transferred from a circuit court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had been referred or transferred. (Code 1950, § 16.1-214; 1956, c. 555; 1966, c. 237; 1977, c. 559; 1978, c. 445; 1981, c. 109; 1982, c. 465; 1983, c. 88; 1984, c. 631; 1986, cc. 143, 465; 1989, c. 473; 1991, c. 534; 1993, c. 970; 1994, c. 673; 1995, c. 517; 1996, c. 866; 1997, cc. 654, 664, 790, 862; 1998, c. 550.)

The 1998 amendments added the last sentence in subsection D.

The 1997 amendments added subsection C1 and *added* or *deleted* language in subsection A and in the first paragraph of subsection H, as follows:

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within thirty days from entry of a final order or judgment. ~~An Protective order orders~~ issued pursuant to § 16.1-279.1 in ~~a case~~ cases of family abuse ~~is-a~~ and orders entered pursuant to § 16.1-278.2 are final ~~order orders~~ from which an appeal may be taken.

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. *Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal.* An appeal will not be perfected unless such appeal bond as may be required is filed within thirty days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

The 1996 amendments, effective July 1, 1997, in subsection A, will substitute "A protective order" for "An order of protection" and will substitute "family abuse" for "spouse abuse"; in subsection H, will insert "unless and" following "no appeal shall be allowed" and will substitute "gives" for "shall give" preceding "bond."

The 1995 amendments added the third sentence in the first paragraph of subsection H, beginning with "An appeal will not be perfected . . ."

Title 16.1 Courts Not of Record

Chap. 11 Juvenile and Domestic Relations District Courts, §§ 226 - 361

Art. 11 Appeal, §§ 296 - 298

§ 16.1-297. Final judgment; copy filed with juvenile court; proceeding may be remanded to juvenile court. — Upon the rendition of final judgment upon an appeal from the juvenile and domestic relations district court, the circuit court shall cause a copy of its judgment to be filed with the juvenile court within twenty-one days of entry of its order, which shall thereupon become the judgment of the juvenile court. In the event such circuit court does not dismiss the proceedings or discharge such child or adult, the circuit court may remand the child or adult to the jurisdiction of the juvenile court for its supervision and care, under the terms of its order or judgment, and thereafter such child or adult shall be and remain under the jurisdiction of the juvenile court in the same manner as if such court had rendered the judgment in the first instance. (Code 1950, § 16.1-215; 1956, c. 555; 1977, c. 559; 1996, c. 828.)

The 1996 amendments added "within twenty-one days of entry of its order" following "filed with the juvenile court."

Title 16.1 Courts Not of Record

Chap. 11 Juvenile and Domestic Relations District Courts, §§ 226 - 361

Art. 10 Probation and Parole, §§ 291 - 295

§ 16.1-293. Supervision of juvenile or person during commitment and on parole; placing juvenile in halfway house. — At such time as the court commits a juvenile to the Department, the juvenile and domestic relations district court service unit shall maintain contact with the juvenile during the juvenile's commitment.

If a person is placed on parole supervision following that person's release from commitment to the Department, the court services unit providing parole supervision shall furnish the person a written statement of the conditions of his parole and shall instruct him regarding the same. The conditions of the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by the court pursuant to § 16.1-291. If the parole supervision is for an indeterminate period of time, the director of the supervising court services unit may approve termination of parole supervision.

The Department shall notify the school division superintendent in the locality where the juvenile was enrolled of his commitment to a facility. The court services unit shall, in consultation with the Department of Correctional Education, the local school division, and the juvenile correctional counselor, develop a reenrollment plan if the juvenile is of compulsory school attendance age or is eligible for special education services pursuant to § 22.1-213. The reenrollment plan shall be in accordance with regulations adopted by the Board of Education pursuant to § 22.1-17.1. The superintendent shall provide the juvenile's scholastic records, as defined in § 22.1-289, and the terms and conditions of any expulsion which was in effect at the time of commitment or which will be in effect upon release. A court may not order a local school board to reenroll a juvenile who has been expelled in accordance with the procedures set forth in § 22.1-277.06. At least fourteen days prior to the juvenile's scheduled release, the Department shall notify the school division superintendent in the locality where the juvenile will reside.

In the event it is determined by the juvenile and domestic relations district court that a person may benefit from placement in the halfway house program operated by the Department, the person may be referred for care and treatment to a halfway house. Persons so placed in a halfway house shall remain in parole status and cannot be transferred or otherwise placed in another institutional setting or institutional placement operated by the Department except as elsewhere provided by law for those persons who have violated their parole status.

In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department and has not attained the age of eighteen years, the local department of social services shall resume custody upon the person's release from commitment, unless an alternative arrangement for the custody of the person has been made and communicated in writing to the Department. The court services unit shall consult with the local department of social services four weeks prior to the person's release from commitment on parole supervision concerning return of the person to the locality and the placement of the person. The court services unit will be responsible for supervising the person's terms and conditions of parole. (Code 1950, § 16.1-210; 1956, c. 555; 1962, c. 628; 1972, cc. 73, 708; 1973, cc. 440, 546; 1977, c. 559; 1980, c. 217; 1981, c. 487; 1985, c. 203; 1988, c. 453; 1996, cc. 755, 914, 916, 1000; 2001, cc. 688, 820, 853.)

The 2001 amendments substituted "person(s)" for "juvenile(s)" in the next-to-last paragraph; added the last paragraph; and *added or deleted* language in the first three paragraphs as follows:

At such time as the court commits a juvenile to the Department, ~~it shall determine whether the juvenile and domestic relations district court service unit or the local department of public welfare or social services shall maintain contact with the juvenile during the juvenile's commitment. Except in exceptional cases, the court shall designate the local department to maintain contact with the juvenile during commitment only when the juvenile was in the custody of the local department immediately prior to his commitment to the Department. The Department shall return a juvenile to the previously designated local supervising agency and shall consult with the local supervising agency two weeks prior to such release on parole supervision concerning return of the juvenile to the local agency, unless there is an agreement for an earlier release. However, when any juvenile is committed to the Department by a circuit court, the juvenile may, upon request of the judge, be returned to the committing court by the Department.~~

~~The local supervising agency~~ *If a person is placed on parole supervision following that person's release from commitment to the Department, the court services unit providing parole supervision shall furnish the juvenile person a written statement of the conditions of his parole and shall instruct him regarding the same. The conditions of the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by the court pursuant to § 16.1-291. If the parole supervision is for an indeterminate period of time, the director of the supervising agency court services unit may approve termination of parole supervision.*

The Department shall notify the school division superintendent in the locality where the juvenile was enrolled of his commitment to a facility. ~~The court services unit or local department of public welfare or social services shall, in consultation with the Department of Correctional Education, the local school division, and the juvenile correctional counselor, develop a reenrollment plan if the juvenile is of compulsory school attendance age or is eligible for special education services pursuant to § 22.1-213. The reenrollment plan shall be in accordance with regulations adopted by the Board of Education pursuant to § 22.1-17.1. The superintendent shall provide the juvenile's scholastic records, as defined in § 22.1-289, and the terms and conditions of any expulsion which was in effect at the time of commitment or which will be in effect upon release. A court may not order a local school board to reenroll a juvenile who has been expelled in accordance with the procedures set forth in § 22.1-277.06. At least fourteen days prior to the juvenile's scheduled release, the Department shall notify the school division superintendent in the locality where the juvenile will reside.~~

The 1996 amendments added the second and third paragraphs, substituted "juvenile" for "child", "juvenile's" for "child's" and "Juveniles" for "Children" throughout.

Note: Acts 1996, cc. 755 & 914, clause 7, provide "That the provisions of this act shall apply to offenses committed and to records created and proceedings held with respect to those offenses on or after July 1, 1996."

Title 16.1 Courts Not of Record

Chap. 11 Juvenile and Domestic Relations District Courts, §§ 226 - 361

Art. 10 Probation and Parole, §§ 291 - 295

§ 16.1-291. Revocation or modification of probation, protective supervision or parole; proceedings; disposition. —

A. A juvenile or person who violates an order of the juvenile court entered into pursuant to §§ 16.1-278.2 through 16.1-278.10, who violates the conditions of his probation granted pursuant to § 16.1-278.5 or § 16.1-278.8, or who violates the conditions of his parole granted pursuant to §§ 16.1-285, 16.1-285.1 or § 16.1-293, may be proceeded against for a revocation or modification of such order or parole status. A proceeding to revoke or modify probation, protective supervision or parole shall be commenced by the filing of a petition. Except as otherwise provided, such petitions shall be screened, reviewed and prepared in the same manner and shall contain the same information as provided in §§ 16.1-260 and 16.1-262. The petition shall recite the date that the juvenile or person was placed on probation, under protective supervision or on parole and shall state the time and manner in which notice of the terms of probation, protective supervision or parole were given.

B. If a juvenile or person is found to have violated a prior order of the court or the terms of probation or parole, the court may, in accordance with the provisions of §§ 16.1-278.2 through 16.1-278.10, upon a revocation or modification hearing, modify or extend the terms of the order of probation or parole, including termination of probation or parole. However, notwithstanding the contempt power of the court as provided in § 16.1-292, the court shall be limited in the actions it may take to those that the court may 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.

C. In the event that a child in need of supervision is found to have willfully and materially violated an order of the court or the terms of his probation granted pursuant to § 16.1-278.5, in addition to or in lieu of the dispositions specified in that section, the court may enter any of the following orders of disposition:

1. Suspend 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; or
2. Order any such child fourteen 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 ten consecutive days for violation of any order of the court or violation of probation arising out of the same petition. The court shall state in its order for detention the basis for all findings required by this section. 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, develop further treatment plans as may be appropriate and submit its report to the court of its determination as to further treatment efforts either during or following the period the child is in secure detention. A child 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 as provided by law.

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

E. If a person adjudicated delinquent and found to have violated an order of the court or the terms of his probation or parole was a juvenile at the time of the original offense and is eighteen years of age or older when the court enters disposition for violation of the order of the court or the terms of his probation or parole, the dispositional alternative specified in § 16.1-284 shall be available to the court. (Code 1950, § 16.1-188; 1956, c. 555; 1977, c. 559; 1991, c. 534; 1992, c. 90; 2001, c. 853.)

The 2001 amendments added subsections C, D and E, and *added* and *deleted* language in subsections A and B as follows:

A. A ~~child juvenile or person~~ who violates an order of the juvenile court entered into pursuant to §§ 16.1-278.2 through 16.1-278.10 , *who violates the conditions of his probation granted pursuant to § 16.1-278.5 or § 16.1-278.8*, or who violates the conditions of his ~~or her~~ parole granted pursuant to §§ 16.1-285, 16.1-285.1 or § 16.1-293 , may be proceeded against for a revocation or modification of such order or parole status. A proceeding to revoke or modify probation, protective supervision or parole shall be commenced by the filing of a petition. Except as otherwise provided, such petitions shall be screened, reviewed and prepared in the same manner and shall contain the same information as provided in §§ 16.1-260 and 16.1-262. The petition shall recite the date that the ~~child juvenile or person~~ was placed on probation, under protective supervision or on parole and shall state the time and manner in which notice of the terms of probation, protective supervision or parole were given. ~~Proceedings to revoke or modify probation, protective supervision or parole shall be governed by the procedures, safeguards, rights and duties applicable to the original proceedings.~~

B. If a ~~child juvenile or person~~ is found to have violated a prior order of the court or the terms of *probation or parole*, the court may, in accordance with the provisions of §§ 16.1-278.2 through 16.1-278.10, upon a revocation or modification hearing, modify or extend the terms of the order *of probation or parole*, including termination of *probation or parole* , ~~or make any other disposition of the child~~ . *However, notwithstanding the contempt power of the court as provided in § 16.1-292, the court shall be limited in the actions it may take to those that the court may 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.*

Title 16.1 Courts Not of Record
Chap. 11 Juvenile and Domestic Relations District Courts, §§ 226 - 361
Art. 5 Intake, Petition and Notice, §§ 259 - 265

§ 16.1-260. Intake; petition; investigation. —

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services, in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred initially to the local department of public welfare or social services in accordance with the provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed shall inquire whether the petitioner is receiving child support services or public assistance. No individual who is receiving support services or public assistance shall be denied the right to file a petition or motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a copy of the petition or motion, together with notice of the court date, to the Division of Child Support Enforcement.

B. The appearance of a child before an intake officer may be by (i) personal appearance before the intake officer or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, an intake officer may exercise all powers conferred by law. All communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

When the court service unit of any court receives a complaint alleging facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake officer, may proceed informally to make such adjustment as is practicable without the filing of a petition or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to establish probable cause for the issuance of the petition.

An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony; (ii) has not previously been proceeded against informally or adjudicated in need of supervision or delinquent; or (iii) is not the subject of a complaint filed pursuant to § 22.1-258 and the attendance officer has provided documentation to the intake officer or magistrate that the relevant school division has complied with the provisions of § 22.1-258. A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is in need of

supervision or delinquent shall be filed with the court if the juvenile had previously been proceeded against informally by intake or had been adjudicated in need of supervision or delinquent.

Whenever informal action is taken as provided in this subsection on a complaint alleging that a child is in need of services, in need of supervision or delinquent, the intake officer shall (i) develop a plan for the juvenile, which may include restitution and the performance of community service, based upon community resources and the circumstances which resulted in the complaint, (ii) create an official record of the action taken by the intake officer and file such record in the juvenile's case file, and (iii) advise the juvenile and the juvenile's parent, guardian or other person standing in loco parentis and the complainant that any subsequent complaint alleging that the child is in need of supervision or delinquent based upon facts which may be sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241 will result in the filing of a petition with the court.

C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody, visitation or support of a child is the subject of controversy or requires determination, (ii) a person has deserted, abandoned or failed to provide support for any person in violation of law, (iii) a child or such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by law, or (iv) family abuse has occurred and a protective order is being sought pursuant to §§ 16.1-253.1, 16.1-253.4 or § 16.1-279.1. If any such complainant does not file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the intake officer believes that probable cause does not exist, or that the authorization of a petition will not be in the best interest of the family or juvenile or that the matter may be effectively dealt with by some agency other than the court, he may refuse to authorize the filing of a petition.

D. Prior to the filing of any petition alleging that a child is in need of supervision, the matter shall be reviewed by an intake officer who shall determine whether the petitioner and the child alleged to be in need of supervision have utilized or attempted to utilize treatment and services available in the community and have exhausted all appropriate nonjudicial remedies which are available to them. When the intake officer determines that the parties have not attempted to utilize available treatment or services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment facility or individual to receive treatment or services, and a petition shall not be filed. Only after the intake officer determines that the parties have made a reasonable effort to utilize available community treatment or services may he permit the petition to be filed.

E. If the intake officer refuses to authorize a petition relating to an offense that if committed by an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the juvenile may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to authorize a petition relating to a child in need of services or in need of supervision, a status offense, or a misdemeanor other than Class 1, his decision is final.

Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 2 of § 16.1-256, the intake officer shall accept and file a petition founded upon the warrant.

F. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition which alleges facts of an offense which would be a felony if committed by an adult.

G. After a petition is filed alleging that a juvenile committed an act which would be a crime if committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

1. A firearm offense pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;
2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;
3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;
4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;
5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;
7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2;
8. Burglary and related offenses, pursuant to §§ 18.2-89 through 18.2-93; or
9. Robbery pursuant to § 18.2-58.

Promptly after filing a petition the intake officer shall also mail notice, by first-class mail, to the superintendent. The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations or animal control violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision H of § 16.1-241.

3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other alcohol-related offense, provided the juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a juvenile to the custody of a parent or legal guardian shall issue a summons to the juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the juvenile so charged with a violation of § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the juvenile, and a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

4. In the case of offenses which, if committed by an adult, would be punishable as a Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241. (Code 1950, § 16.1-164; 1956, c. 555; 1972, cc. 672, 835; 1973, c. 440; 1977, c. 559; 1979, c. 701; 1982, c. 91; 1983, c. 349; 1985, c. 488; 1986, c. 381; 1987, cc. 203, 632; 1988, cc. 792, 803; 1990, c. 742; 1991, cc. 496, 511, 534; 1992, cc. 502, 527, 542; 1993, c. 981; 1995, cc. 347, 429; 1996, cc. 755, 914; 1997, c. 862; 1999, cc. 54, 526, 952.)

The 1999 amendments deleted the "1" in front of the second paragraph of subsection B; deleted "is" following "of services" in the beginning of the fourth paragraph of subsection B; added clause (iv) in subsection C; added subdivision G 9; and added or deleted language in the third paragraph of subsection B and in subdivision G 1 as follows: *However, An intake officer may proceed informally on a complaint alleging a child is in need of services, in need of supervision or delinquent only if the juvenile (i) is not alleged to have committed a violent juvenile felony; or (ii) has not previously been proceeded against informally or adjudicated in need of supervision or delinquent; or (iii) is not the subject of a complaint filed pursuant to § 22.1-258 and the attendance officer has provided documentation to the intake officer or magistrate that the relevant school division has complied with the provisions of § 22.1-258.* A petition alleging that a juvenile committed a violent juvenile felony shall be filed with the court. A petition alleging that a juvenile is in need of supervision or delinquent shall be filed with the court if the juvenile had previously *been proceeded against informally by intake or had been adjudicated in need of supervision or delinquent.*

(G) 1. ~~The unlawful purchase, possession or use of a weapon~~ *A firearm offense* pursuant to Article 4 (§ 18.2-279 et seq.), 5 (§ 18.2-288 et seq.), 6 (§ 18.2-299 et seq.), or 7 (§ 18.2-308 et seq.) of Chapter 7 of Title 18.2;

The 1997 amendments substituted "or" for "and" preceding "(ii)" in the second paragraph of subdivision B 1.

Note: Acts 1996, cc. 755 & 914, clause 7, provide "That the provisions of this act shall apply to offenses committed and to records created and proceedings held with respect to those offenses on or after July 1, 1996."

The 1996 amendments substituted "juvenile" for "child" throughout, substituted "subsection H" for "subsection F" in the first sentence of subsection A, added a new subsection B, redesignated the first sentence of former subsection B as subdivision B 1, added the second and third paragraphs following subdivision B 1, redesignated the second, third and fourth sentences of former subsection B as subsection C, redesignated former subsections C through G as D through I, substituted "subdivision 2 of § 16.1-256" for "subdivision 3 of § 16.1-256" in the second paragraph of subsection E, and *added or deleted* language in subdivision G 8 as follows:

8. *Burglary and related offenses*, pursuant to § 18.2-89 through 18.2-93.

The 1995 amendments added a new subsection E1 and a new subdivision F 4.

Title 16.1 Courts Not of Record

Chap. 11 Juvenile and Domestic Relations District Courts, §§ 226 - 361

Art. 3 Jurisdiction and Venue, §§ 241 - 245.1

§ 16.1-241. Jurisdiction. — The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244; and

6. Who is charged with a traffic infraction as defined in § 46.2-100.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile

court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, or any other person whose interest in the child derives from or through such person whose parental rights have been so terminated, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.1-219.48, or (ii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of this Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section; or
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services which are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law which causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.1-248.6:1.

U. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.1-219.40. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to allow notice to an authorized person. After a hearing, a judge may authorize a physician to perform an abortion upon finding that the minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the minor is not mature, the judge shall, after a hearing, determine whether the performance of an abortion upon the minor without notice to an authorized person would be in the minor's best interest, and if the court finds that the abortion would be in the minor's best interest, it shall so authorize a physician.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Court proceedings under this subsection shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard as soon as practicable but in no event later than four days after the petition is filed.

Notwithstanding any other provision of law, an expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order authorizing an abortion without notification shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without notice to an authorized person.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless notice has been given or the minor delivers to the physician a court order entered pursuant to this section. However, neither notice nor judicial authorization shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.1-248.2 and reports the suspected abuse or neglect in accordance with § 63.1-248.3; or if, in the attending physician's good faith medical judgment, (i) the abortion is medically necessary immediately to avert the minor's death or (ii) there is insufficient time to provide the required notice or judicial authorization because a delay would create a serious risk of substantial impairment of a major bodily function or substantial physical injury. The attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor.

"Notice" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least twenty-four hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least seventy-two hours prior to the performance of the abortion; or (iii) at least one authorized person is present with the minor seeking the abortion; or (iv) the minor has delivered to the physician a written statement signed by an authorized person and witnessed by a competent adult that the authorized person knows of the minor's intent to have an abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in §§ 18.2-72, 18.2-73 or § 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the armed forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

W. Petitions filed pursuant to Article 17. (§ 16.1-349 et seq.) of this chapter relating to standby guardians for minor children.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A or subsection B, D, M or R of this section.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection V shall be guilty of a Class 3 misdemeanor. (Code 1950, § 16.1-158; 1956, c. 555; 1960, c. 388; 1968, c. 225; 1970, cc. 232, 600; 1973, c. 440; 1976, cc. 42, 324; 1977, cc. 525, 559; 1978, c. 648; 1979, cc. 597, 605, 628; 1980, cc. 527, 529; 1981, cc. 454, 475, 488, 491, 501, 502, 510; 1982, c. 46; 1983, c. 280; 1984, cc. 631, 645, 651, 665, 669; 1985, c. 270; 1986, cc. 59, 506; 1987, c. 632; 1988, cc. 797, 906; 1989, cc. 368, 733; 1990, cc. 704, 975; 1991, cc. 511, 715; 1992, cc. 585, 742; 1994, cc. 575, 719, 813, 859, 949; 1995, cc. 7, 665, 772, 826, 852; 1996, cc. 755, 914; 1997, cc. 690, 708; 1998, c. 829; 1999, cc. 697, 721, 1028; 2000, c. 830.)

The 2000 amendments substituted "§ 63.1-219.48" for "§ 63.1-231" in the last paragraph of subsection A and substituted "§ 63.1-219.40" for "§ 63.1-220.3" in subsection U.

The 1999 amendments substituted "has his whereabouts unknown" for "his whereabouts is unknown" in clause (ii), and deleted "he" at the beginning of clause (iii) of subsection D; inserted "or" at the end of subdivision F 2; inserted "a" before "work permit" in subsection H; deleted the last sentence of the second paragraph of subsection J (set out below); and inserted "§ 18.2-63" after "§ 18.2-61" in clause (ii) of the last paragraph of subsection A.

~~(J) For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.~~

The 1998 amendments added subsection W.

The 1997 amendments added subsection V and the last paragraph, and *added or deleted* language in clause (i) of the last paragraph of subsection A as follows: ". . . (i) whose parental rights have been ~~involuntarily~~ terminated by court order, *either voluntarily or involuntarily, or any other person whose interest in the child derives from or through such person whose parental rights have been so terminated, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members,* if the child subsequently has been legally adopted *except where a final order of adoption is entered pursuant to § 63.1-231 or (ii) . . .*"

Note: Acts 1996, cc. 755 & 914, clause 7, provide "That the provisions of this act shall apply to offenses committed and to records created and proceedings held with respect to those offenses on or after July 1, 1996."

The 1996 amendments added the second and third paragraphs of subdivision A 6, and *added or deleted* language in subdivision A 1 and in the last paragraph as follows:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated ~~under the provisions of § 16.1-269.6 or divested;~~

Notwithstanding any other provision of law no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A or ~~subsections~~ *subsection B, D, M or R* of this section.

The 1995 amendments added subsections T and U and the last paragraph, added the second and third sentences in the second paragraph of subsection J, and *added* or *deleted* language in subsection S as follows:

S. Petitions filed by school boards against ~~a parent~~ *parents* pursuant to § 16.1-241.2 and 22.1-279.3.

VIRGINIA:

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY

PROBATION REVOCATION ORDER

FIPS CODE: 067

HEARING DATE: MARCH 1, 2002

JUDGE: HONORABLE WILLIAM N. ALEXANDER, II

COMMONWEALTH OF VIRGINIA

v.

- 00 07 0358

DIANA MARIE AUSTIN, DEFENDANT

This case came before the Court for the continuation of the revocation of probation hearing of the defendant, Diana Marie Austin, who was led to the bar in the custody of the jailer of this county, and came also, John T. Boitnott, attorney for the defendant, previously appointed. Patrick T. Nix represented the Commonwealth.

On June 6, 2000, the defendant appeared before this Court upon an appeal of the sentence rendered January 10, 2000, and reviewed March 9, 2000, by the Juvenile and Domestic Relations District Court of Franklin County, after findings of guilt on two charges of auto larceny and three charges of violating juvenile probation. The defendant had been sentenced to confinement with the Virginia Department of Juvenile Justice for an indeterminate period.

On June 6, 2000, this Court affirmed the finding and sentencing of the Juvenile and Domestic Relations District Court of Franklin County, and defendant was re-committed to the Department of Juvenile Justice for an indeterminate period.

On February 22, 2002, the defendant appeared before this Court upon a revocation of probation hearing. The Court found that defendant had violated the terms and conditions of her probation and **ORDERED** the defendant be held in Juvenile detention and evaluated for the Boot Camp Incarceration Program.

And on February 26, 2002, the Court was advised that the defendant was found to be unsuitable for the Boot Camp Incarceration Program, and this matter was continued to March 1, 2002.

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And on March 1, 2002, the Court heard the evidence and argument of counsel on the defendant's Motion to dismiss, and denied the motion. After hearing the additional evidence of the Commonwealth and the defendant, and having previously found that the defendant had violated the terms and conditions of her probation,

The Court **ORDERS** that the defendant be committed to the Department of Juvenile Justice for an indeterminate period.

The Court, in its discretion, suspends the execution of the indeterminate commitment to the Department of Juvenile Justice, upon the following conditions:

- Defendant shall be held in Juvenile detention for a period of six months.
- Temporary custody of the defendant shall be vested in the Franklin County Department of Social Services, who shall investigate and work toward finding a suitable wilderness or other alternative program to benefit the defendant.
- Defendant shall be evaluated for potential entry into such wilderness or other alternative program.

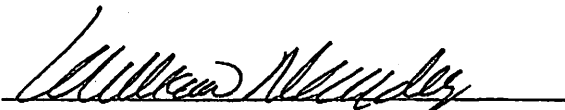
This case is continued to April 1, 2002 at 8:30 a.m.

The Clerk of this Court shall mail or deliver certified copies of this Order to John T. Boitnott, Esquire, to Martha Phillips, Juvenile Probation Officer, to Sarah A. Rice, Esquire, attorney for the Franklin County Department of Social Services, and to the attorney for the Commonwealth.

DATE

3/8/02

ENTER:



JUDGE

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

DIANA MARIE AUSTIN,

Defendant.

AMENDED ORDER

File No.: 00-07-0358

On March 1, 2002, came Patrick T. Nix, attorney for the Commonwealth, the defendant, Diana Marie Austin, who was led to the bar in the custody of the jailer of this county, and came also, John T. Boitnott, the attorney for the defendant, previously appointed, upon a probation revocation proceeding.

On March 1, 2002, the Court heard the evidence and argument of counsel on the defendant's motion to dismiss, and denied the motion after hearing the additional evidence of the Commonwealth and the defendant, and having previously found that the defendant had violated the terms and conditions of her probation, the Court ordered that the defendant be committed to the Department of Juvenile Justice for an indeterminate period and the Court, in its discretion, suspended the execution of the indeterminate commitment to the Department of Juvenile Justice, upon the following condition:

- Defendant shall be held in Juvenile detention for a period of six months.
- Temporary custody of the defendant shall be vested in the Franklin County Department of Social Services, as the Court found that all reasonable efforts have been made to prevent Diana Marie Austin's removal from her home and the Court found it to be in the best interest to remove her from her home and be placed in foster care with the Franklin County Department of Social Services. The Franklin County Department of Social Services shall investigate

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and work toward finding a suitable wilderness or other alternative program to benefit the defendant.

Defendant shall be evaluated for potential entry into such wilderness or other alternative program.

This case is continued to April 1, 2002, at 8:30 a. M.

The Clerk of this Court shall mail or deliver certified copies of this Amended Order to John T. Boitnott, Esquire, to Martha Phillips, Juvenile Probation Officer, to Sarah A. Rice, Esquire, attorney for the Franklin County Department of Social Services. and to the attorney for the Commonwealth.

ENTER:

3/29/02

William N. Alexander
JUDGE

VIRGINIA:

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY

PROBATION REVOCATION ORDER

FIPS CODE: 067

HEARING DATE: APRIL 24, 2002

JUDGE: HONORABLE WILLIAM N. ALEXANDER, II

COMMONWEALTH OF VIRGINIA

v.

00 07 0358

DIANA MARIE AUSTIN, DEFENDANT

This case came before the Court for the continuation of the revocation of probation hearing of the defendant, Diana Marie Austin, who was led to the bar in the custody of the jailer of this county, and came also, John T. Boitnott, attorney for the defendant, previously appointed. Patrick T. Nix represented the Commonwealth.

On June 6, 2000, the defendant appeared before this Court upon an appeal of the sentence rendered January 10, 2000, and reviewed March 9, 2000, by the Juvenile and Domestic Relations District Court of Franklin County, after findings of guilt on two charges of auto larceny and three charges of violating juvenile probation. The defendant had been sentenced to confinement with the Virginia Department of Juvenile Justice for an indeterminate period.

On June 6, 2000, this Court affirmed the finding and sentencing of the Juvenile and Domestic Relations District Court of Franklin County, and defendant was re-committed to the Department of Juvenile Justice for an indeterminate period.

On February 22, 2002, the defendant appeared before this Court upon a revocation of probation hearing. The Court found that defendant had violated the terms and conditions of her probation and ORDERED the defendant be held in Juvenile detention and evaluated for the Boot Camp Incarceration Program.

On February 26, 2002, the Court was advised that the defendant was found to be unsuitable for the Boot Camp Incarceration Program, and this matter was continued to March 1, 2002.

On March 1, 2002, the Court heard the evidence and argument of counsel on the defendant's Motion to dismiss, and denied the motion. After hearing the additional evidence of the

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Commonwealth and the defendant, and having previously found that the defendant had violated the terms and conditions of her probation, the Court Ordered that defendant be re-committed to the Department of Juvenile Justice for an indeterminate period. The Court suspended the execution of the indeterminate commitment to the Department of Juvenile Justice, upon the following conditions:

- Defendant shall be held in Juvenile detention for a period of six months.
- Temporary custody of the defendant shall be vested in the Franklin County Department of Social Services, as the Court found that all reasonable efforts have been made to prevent Diana Marie Austin's removal from her home and the Court found it to be in the best interest to remove her from her home and be placed in foster care with the Franklin County Department of Social Services. The Franklin County Department of Social Services shall investigate and work toward finding a suitable wilderness or other alternative program to benefit the defendant.
- Defendant shall be evaluated for potential entry into such wilderness or other alternative program.

And on April 24, 2002, the Court again heard a review of the defendant's progress since the last hearing. The attorney for the defendant made a motion to remand this case to the Juvenile and Domestic Relations District Court of Franklin County, which motion the Court overruled. After hearing the additional evidence and argument of counsel, the Court ORDERS that defendant be committed to the Department of Juvenile Justice for an indeterminate period. The Court further terminates the Franklin County Department of Social Service temporary custody of the defendant.

The Clerk of this Court shall mail or deliver certified copies of this Order to John T. Boitnott, Esquire, to Martha Phillips, Juvenile Probation Officer, to Sarah A. Rice, Esquire, attorney for the Franklin County Department of Social Services, and to the attorney for the Commonwealth.

DATE 4/25/02 ENTER: *William W. Thompson*
JUDGE

1288H

VIRGINIA:

IN THE CIRCUIT COURT FOR FRANKLIN COUNTY

CORRECTED PAROLE REVOCATION ORDER

FIPS CODE: 067

HEARING DATE: APRIL 24, 2002

JUDGE: HONORABLE WILLIAM N. ALEXANDER, II

COMMONWEALTH OF VIRGINIA

v.

00 07 0358

DIANA MARIE AUSTIN, DEFENDANT

This case came before the Court for the continuation of the revocation of parole hearing of the defendant, Diana Marie Austin, who was led to the bar in the custody of the jailer of this county, and came also, John T. Boitnott, attorney for the defendant, previously appointed. Patrick T. Nix represented the Commonwealth.

On June 6, 2000, the defendant appeared before this Court upon an appeal of the sentence rendered January 10, 2000, and reviewed March 9, 2000, by the Juvenile and Domestic Relations District Court of Franklin County, after findings of guilt on two charges of auto larceny and three charges of violating juvenile parole. The defendant had been sentenced to confinement with the Virginia Department of Juvenile Justice for an indeterminate period.

On June 6, 2000, this Court affirmed the finding and sentencing of the Juvenile and Domestic Relations District Court of Franklin County, and defendant was re-committed to the Department of Juvenile Justice for an indeterminate period.

On February 22, 2002, the defendant appeared before this Court upon a revocation of parole hearing. The Court found that defendant had violated the terms and conditions of her parole and **ORDERED** the defendant be held in Juvenile detention and evaluated for the Boot Camp Incarceration Program.

On February 26, 2002, the Court was advised that the defendant was found to be unsuitable for the Boot Camp Incarceration Program, and this matter was continued to March 1, 2002.

On March 1, 2002, the Court heard the evidence and argument of counsel on the defendant's Motion to dismiss, and denied the motion. After hearing the additional evidence of the

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Commonwealth and the defendant, and having previously found that the defendant had violated the terms and conditions of her parole, the Court Ordered that defendant be re-committed to the Department of Juvenile Justice for an indeterminate period. The Court suspended the execution of the indeterminate commitment to the Department of Juvenile Justice, upon the following conditions:

- Defendant shall be held in Juvenile detention for a period of six months.
- Temporary custody of the defendant shall be vested in the Franklin County Department of Social Services, as the Court found that all reasonable efforts have been made to prevent Diana Marie Austin's removal from her home and the Court found it to be in the best interest to remove her from her home and be placed in foster care with the Franklin County Department of Social Services. The Franklin County Department of Social Services shall investigate and work toward finding a suitable wilderness or other alternative program to benefit the defendant.
- Defendant shall be evaluated for potential entry into such wilderness or other alternative program.

And on April 24, 2002, the Court again heard a review of the defendant's progress since the last hearing. The attorney for the defendant made a motion to remand this case to the Juvenile and Domestic Relations District Court of Franklin County, which motion the Court overruled. After hearing the additional evidence and argument of counsel, the Court ORDERS that defendant be committed to the Department of Juvenile Justice for an indeterminate period. The Court further terminates the Franklin County Department of Social Service temporary custody of the defendant.

The Clerk of this Court shall mail or deliver certified copies of this Order to John T. Boitnott, Esquire, to Martha Phillips, Juvenile Parole Officer, to Sarah A. Rice, Esquire, attorney for the Franklin County Department of Social Services, and to the attorney for the Commonwealth.

DATE 5/16/02 ENTER: William A. McDonald
JUDGE

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

COMMONWEALTH OF VIRGINIA *

VS. *

Case No. 00-07-0358

DIANA MARIE AUSTIN *

Defendant *

NOTICE OF APPEAL

The defendant, Diana Marie Austin, by counsel, hereby gives notice of appeal to the Court of Appeals of Virginia from the final judgment order of this Court entered April 25, 2002, and further gives notice that a transcript or statement of facts, testimony, and other incidents of the case will be filed.

DIANA MARIE AUSTIN

BY: John T. Boitnott

Counsel

John T. Boitnott
5 East Court Street, Suite 301
Rocky Mount, Virginia 24151
Virginia State Bar No. 21910
Telephone No. (540) 483-8822
Counsel for Defendant

JOHN T. BOITNOTT
Attorney at Law
Rocky Mount, Va. 24151

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CERTIFICATE

I, John T. Boitnott, counsel of record for Diana Marie Austin, hereby certify that:

1. The name and address of the appellant is: Diana Marie Austin, c/o Jeff Austin, 2280 Truman Hill Road, Hardy, VA 24101.

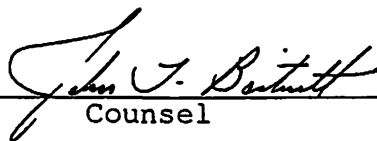
2. The name, address, and telephone number of counsel for appellant is: John T. Boitnott, 5 East Court Street, Suite 301, Rocky Mount, VA 24151, (540)483-8822.

3. The name and address of appellee is the Commonwealth of Virginia, c/o Clifford F. Hapgood, Commonwealth's Attorney, Courthouse, 275 South Main Street, Rocky Mount, VA 24151.

4. The name, address, and telephone number of counsel for appellee is: Clifford F. Hapgood, Commonwealth's Attorney, Courthouse, 275 South Main Street, Rocky Mount, VA 24151, (540)483-3092.

5. Counsel for defendant has been appointed.

6. A copy of this Notice of Appeal has been mailed or delivered to all opposing counsel and to the Clerk of the Court of Appeals this 20th day of May, 2002.


Counsel

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CLERK OF CIRCUIT COURT

ALICE S. HALL

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

COMMONWEALTH OF VIRGINIA *

VS. *

Case No. 00-07-0358

DIANA MARIE AUSTIN *

Defendant *

NOTICE OF FILING WRITTEN STATEMENT

To: Clifford F. Hapgood, Esquire
Commonwealth Attorney's Office
Franklin County Courthouse
275 South Main Street
Rocky Mount, Virginia 24151

PLEASE TAKE NOTICE that a written statement of the evidence in the above-styled matter has been filed in the Office of the Clerk of this Court on the 19th day of June, 2002, a copy of which written statement has been attached hereto, and that at 8 a.m. of the 8th day of July, 2002, or as soon thereafter as counsel may be heard, I will present the written statement to the Judge of the Circuit Court of Franklin County in his chambers at the Franklin County Courthouse, 275 South Main Street, Rocky Mount, Virginia.

Given under my hand this 19th day of June, 2002.

DIANA MARIE AUSTIN

BY: John T. Boitnott

Counsel

John T. Boitnott
5 East Court Street, Suite 301
Rocky Mount, Virginia 24151
Virginia State Bar No. 21910
Telephone No. (540)483-8822
Counsel for Defendant

PO
6/19/02
JTB

JOHN T. BOITNOTT
Attorney at Law
Rocky Mount, Va. 24151

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

COMMONWEALTH OF VIRGINIA

VS.

DIANA MARIE AUSTIN

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AGREED STATEMENT OF FACTS
Case No. 00-07-0358

According to Rule 5A:8 of the Rules of the Supreme Court of Virginia, the parties submit this agreed written statement of facts, testimony, and other incidents of the case as follows:

1. On January 10, 2000, defendant, Diana Marie Austin, was committed to the Department of Juvenile Justice by the Franklin County Juvenile and Domestic Relations District Court for an indeterminate period. On March 9, 2000, the Court reviewed its order of commitment under Section 16.1-289 of the Code of Virginia (1950), as amended, and continued defendant's commitment to the Department of Juvenile Justice. This order was appealed to the Franklin County Circuit Court.

2. On June 6, 2000, the Franklin County Circuit Court affirmed the findings of the Juvenile Court and continued defendant's commitment to the Department of Juvenile Justice.

3. On September 24, 2001, defendant was released and placed on parole under the parole supervision authority of the 22nd District Juvenile and Domestic Relations Court Service Unit as agent of the Department of Juvenile Justice.

4. On February 20, 2002, a Probation Officer of the 22nd

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District Juvenile and Domestic Relations Court Service Unit filed a petition with the Franklin County Circuit Court based on allegations of violation of parole by defendant.

5. On March 1, 2002, the Franklin County Circuit Court denied defendant's motion to dismiss the petition for lack of subject matter jurisdiction.

6. On April 24, 2002, the Franklin County Circuit Court found that defendant had violated the terms and conditions of her parole and committed her to the Department of Juvenile Justice for an indeterminate period. This order was entered April 25, 2002.

Prepared by:



John T. Boitnott
Price Perdue Building, Suite 301
5 East Court Street
Rocky Mount, Virginia 24151
Virginia State Bar No. 21910
Telephone No. (540)483-8822
Counsel for Defendant

Seen and Agreed by:



Patrick Thomas Nix
Commonwealth Attorney's Office
Franklin County Courthouse
275 South Main Street
Rocky Mount, Virginia 24151
Virginia State Bar No. 40186
Telephone No. (540)483-3092
Assistant Commonwealth's Attorney

VIRGINIA:

IN THE CIRCUIT COURT OF FRANKLIN COUNTY

COMMONWEALTH OF VIRGINIA

VS.

DIANA MARIE AUSTIN

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ORDER

Case No. 00-07-0358

On this day, the parties appeared by counsel and presented an agreed statement of facts, testimony, and other incidents of the case according to Rule 5A:8 of the Rules of the Supreme Court of Virginia.

This agreed statement of facts is attached and made a part of this order.

It is ORDERED that this agreed statement of facts, testimony, and other incidents of the case shall become a part of the record of this case.

ENTER this 10th day of July, 2002.

William W. Mendenhall
Judge

Prepared by:

John T. Boitnott
John T. Boitnott
Price Perdue Building, Suite 301
5 East Court Street
Rocky Mount, Virginia 24151
Virginia State Bar No. 21910
Telephone No. (540) 483-8822
Counsel for Defendant

Seen and Agreed by:

Patrick Thomas Nix
Patrick Thomas Nix
Commonwealth Attorney's Office
Franklin County Courthouse
275 South Main Street
Rocky Mount, Virginia 24151
Virginia State Bar No. 40186
Telephone No. (540) 483-3092
Assistant Commonwealth's Attorney

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VIRGINIA:

In the Court of Appeals of Virginia on Tuesday *the* 23rd
day of December, 2003.

Diana Marie Austin,

Appellant,

against

Record No. 1311-02-3

Circuit Court No. CR00 07 0358

Commonwealth of Virginia,

Appellee.

From the Circuit Court of Franklin County

Before Judges Humphreys, Felton and Kelsey

For reasons stated in writing and filed with the record, the Court is of opinion that there is no error in the judgment appealed from. Accordingly, the judgment is affirmed. The appellant shall pay to the Commonwealth of Virginia thirty dollars damages.

It is ordered that the trial court allow counsel for the appellant a fee of \$725 for services rendered the appellant on this appeal, in addition to counsel's costs and necessary direct out-of-pocket expenses.

The Commonwealth shall recover of the appellant the amount paid court-appointed counsel to represent her in this proceeding, counsel's costs and necessary direct out-of-pocket expenses, and the fees and costs to be assessed by the clerk of this Court and the clerk of the trial court.

This order shall be certified to the trial court.

Costs due the Commonwealth by
appellant in Court of Appeals of Virginia:

Attorney's fee \$725.00 plus costs and expenses

A Copy,

Teste:

Cynthia L. McCoy, Clerk
This mandate of the Court of Appeals of
Virginia has not yet been certified to
the trial court, pursuant to Rule 5A:31.

By:

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Deputy Clerk

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VIRGINIA:

In the Court of Appeals of Virginia on Monday *the* 2nd
day of February, 2004.

Diana Marie Austin,

Appellant,

against

Record No. 1311-02-3

Circuit Court No. CR00 07 0358

Commonwealth of Virginia,

Appellee.

Upon a Petition for Rehearing

Before Judges Humphreys, Felton and Kelsey

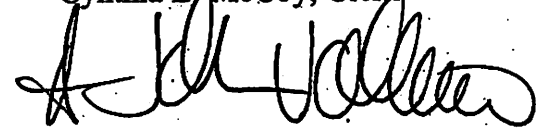
On consideration of the petition of the appellant to set aside the judgment rendered herein on the 23rd day of December, 2003 and grant a rehearing thereof, the said petition is denied.

A Copy,

Teste:

By:

Cynthia L. McCoy, Clerk



Deputy Clerk

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VIRGINIA:

In the Court of Appeals of Virginia on Monday *the* 2nd
day of February, 2004.

Diana Marie Austin,

Appellant,

against

Record No. 1311-02-3
Circuit Court No. CR00 07 0358

Commonwealth of Virginia,

Appellee.

Upon a Petition for Rehearing En Banc

Before Chief Judge Fitzpatrick, Judges Benton, Elder, Annunziata, Bumgardner,
Frank, Humphreys, Clements, Felton, Kelsey and McClanahan

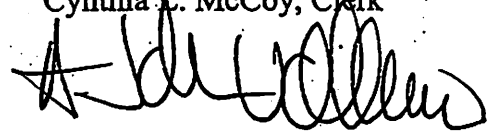
On consideration of the petition of the appellant to set aside the judgment rendered herein on the 23rd day of December, 2003 and grant a rehearing *en banc* thereof, the said petition is denied on the grounds that there is no dissent in the panel decision, no member of the panel has certified that the decision is in conflict with a prior decision of the Court, nor has a majority of the Court determined that it is appropriate to grant the petition for rehearing *en banc* in this case. Code § 17.1-402(D).

A Copy,

Teste:

Cynthia L. McCoy, Clerk

By:



Deputy Clerk

By *Boitnott*



FILE COPY

CLERK
COURT OF APPEALS OF VIRGINIA

FEB 09 2004

RICHMOND, VIRGINIA

VIRGINIA:

IN THE COURT OF APPEALS OF VIRGINIA

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DIANA MARIE AUSTIN

Appellant

VS.

Record No. 1311-02-3

Circuit Court No. 00-07-0358-01

COMMONWEALTH OF VIRGINIA

Appellee

NOTICE OF APPEAL

The appellant, Diana Marie Austin, by counsel, hereby gives notice of appeal to the Supreme Court of Virginia from the order of this Court entered February 2, 2004.

DIANA MARIE AUSTIN

BY:

John T. Boitnott
Counsel

John T. Boitnott
5 East Court Street, Suite 301
Rocky Mount, Virginia 24151
Virginia State Bar No. 21910
Telephone No. (540)483-8822
Counsel for Appellant

JOHN T. BOITNOTT

ATTORNEY AT LAW
ROCKY MOUNT, VA 24151

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CERTIFICATE

I, John T. Boitnott, counsel of record for Diana Marie Austin, hereby certify that:

1. The name and address of the appellant is: Diana Marie Austin, c/o Jeff Austin, 2280 Truman Hill Road, Hardy, VA 24101.


2. The name, address, and telephone number of counsel for appellant is: John T. Boitnott, 5 East Court Street, Suite 301, Rocky Mount, VA 24151, (540) 483-8822.

3. The name and address of the appellee is: Commonwealth of Virginia, c/o Michael T. Judge, Office of the Attorney General, 900 East Main Street, Richmond VA 23219, (804) 786-2071.

4. The name, address, and telephone number of counsel for appellee is: Michael T. Judge, Office of the Attorney General, 900 East Main Street, Richmond VA 23219, (804) 786-2071.

5. Counsel for appellant has been appointed.

6. A copy of this Notice of Appeal has been mailed or delivered to all opposing counsel and to the Clerk of the Supreme Court of Virginia this 9th day of February, 2004.


Counsel

JOHN T. BOITNOTT
ATTORNEY AT LAW
ROCKY MOUNT, VA 24151

ASSIGNMENT OF ERROR

The circuit court erred by failing to dismiss this juvenile parole revocation proceeding against appellant Diana Marie Austin ("Austin") for lack of subject matter jurisdiction. The Court of Appeals held that Austin remained under the jurisdiction of the circuit court while she was on parole and affirmed the judgment of the circuit court. Austin v. Commonwealth, 41 Va. App. ____ (1311-02-3), ____ S.E.2d ____ (2003).