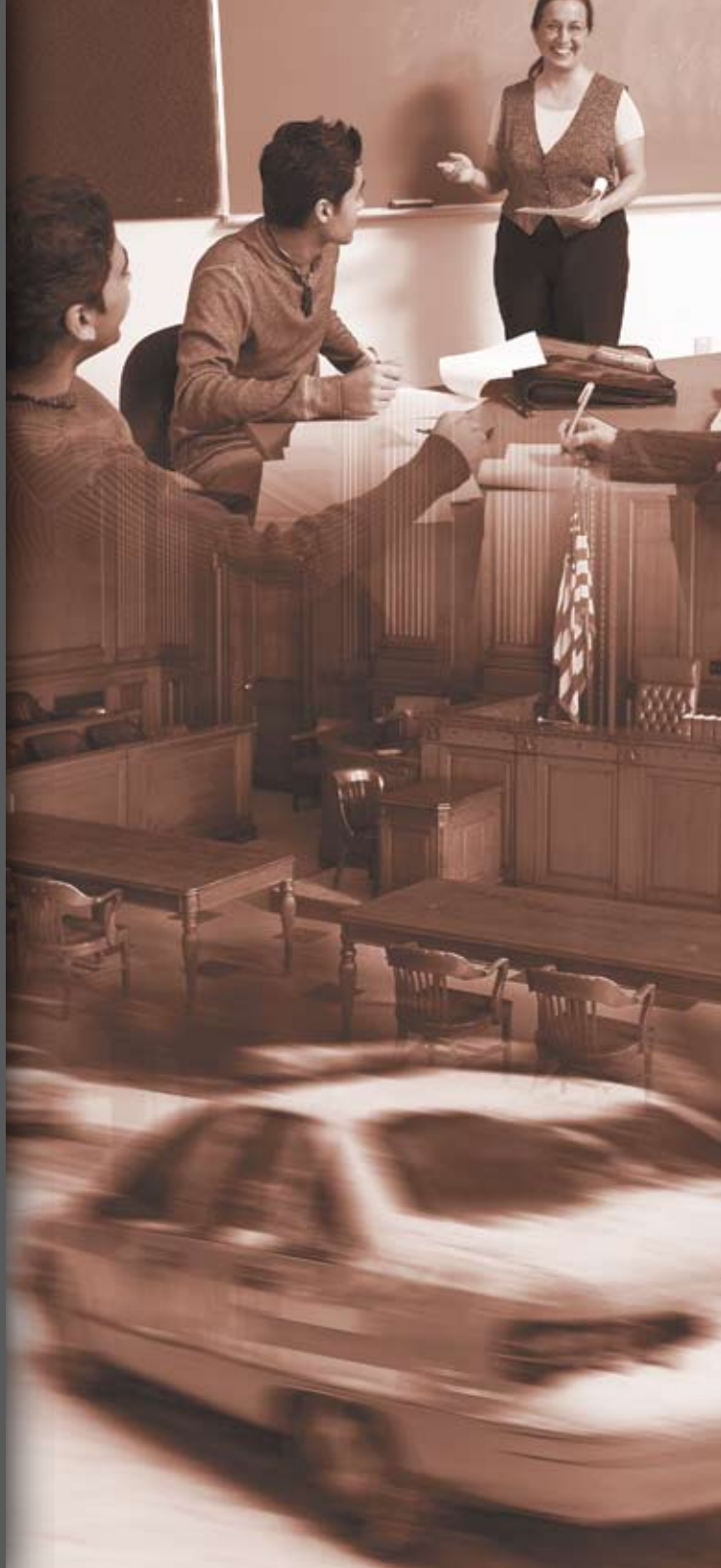


# JUVENILE RIGHTS HANDBOOK





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# PART I

## Right To An Education

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Both the United States and the Commonwealth of Virginia recognize that you have the right to an education. In fact, Virginia law requires that all students from five (5) years of age to eighteen (18) years of age attend a public, private or religious school or receive home instruction. While the law entitles you to an education, there are expectations and rules that must be followed.

## School Discipline

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### **Q: What kind of behavior can result in suspension or expulsion?**

A: There are various reasons that a student may be expelled or suspended. A student may be suspended or expelled for breaking the law or for violating the school's code of student conduct. Some reasons for suspension or expulsion include:

- Having unexcused absences or late arrivals;
- Insulting teachers or other students;
- Threatening teachers or other students;
- Damaging school property;
- Associating with gangs;
- Throwing objects;
- Fighting;
- Committing indecent exposure;
- Possessing or using drugs, look-alike drugs, or tobacco (including dip);
- Spitting;
- Smoking;
- Engaging in sexual conduct including harassment; or
- Possessing weapons.

At the beginning of each school year, school staff will review the code of student conduct with all students. The code of student conduct explains rules and behav-



ior expectations, including what conduct will result in punishment. You and your parents may be required to sign an acknowledgement that you received and reviewed the code of student conduct.

**Q: What are my rights if I am suspended from school?**

A: There are two types of suspensions, short-term and long-term.

**Short term Suspensions:**

A short-term suspension is a removal from school for ten (10) school days or less. Prior to the suspension, the school administrator must give you an opportunity to explain your side of the story. If the school administrator still decides to send you home, he or she must give you written notice describing the reasons for the suspension as well as the length of the suspension. This notice usually comes in the form of a letter to your parents. The notice must also include: (1) information regarding the availability of community-based educational programs or other options for alternative education during your suspension; and (2) explain that you have the right to return to school once the suspension ends. If you disagree with the version of events included in the notice or with the punishment you have received, you and your family have the right to appeal the decision to the superintendent of the school system and potentially to the school board. If you still disagree with decision, you can appeal to the local circuit court.

**Long-term Suspensions:**

A long-term suspension is a removal from school for more than ten (10) school days and up to 365 calendar days. The same notice and opportunity to be heard requirements for short-term suspensions apply except that the notice must also advise you of your right to appeal the decision. Long-term suspensions are generally ordered by the superintendent of the school system upon the recommendation of a school administrator. If you disagree with the decision, you may appeal to school board and then to the local circuit court.

NOTE: If a school administrator believes you are a danger to yourself or to others, he or she may remove you from school grounds without issuing a written notice. The school administrator is required, however, to provide you with the notice as soon as reasonably possible after you are removed.

**Q: Do I need a lawyer to appeal a suspension to the superintendent or school board?**

A: No. The appeals are typically meetings. You can bring people (such as coaches, ministers, employers, or family members) to speak on your behalf and explain why you should not be suspended.

**Q: What are my rights if I am expelled from school?**

A: Expulsion is when the school board removes you from school for an entire year and requires that you apply for re-admission at the conclusion of your expulsion. The school must provide written notice of the intent to expel, stating the reasons for expulsion, identifying available alternative community-based educational programs, and advising you of your right to appeal.

**Q: Can I still receive an education when I am suspended or expelled?**

A: Yes. The school board may but is not required to allow you to receive educational services at home or in an alternative school.

**Q: What should I do while I am suspended or expelled?**

A: You should try to continue your education. You should also stay out of trouble and use the time productively by working or volunteering. If you have been expelled, these steps may help you in applying for re-admission.

**Q: What is “zero tolerance”?**

A: “Zero tolerance” is a phrase referring to rules that, if broken, result in automatic consequences without regard to the circumstances. For example, many schools have zero tolerance programs for drug and alcohol abuse, violence, and harassment.

**Q: What does my school mean by “weapon”?**

A: Schools define “weapons” broadly. Weapons can include any object used to threaten or intimidate others. This includes knives, pen knives, screwdrivers, blades, or firearms. “Look-alike” weapons, including plastic knives and water guns, are considered weapons. For your safety, for the safety of your peers and teachers and to avoid punishment, you should keep any object that can be construed as a weapon away from school grounds.

**Q: What happens if I bring a weapon to school?**

A: If you possess a weapon on school property, while traveling to and from school (including weapons in personal cars parked on school property) or at school sponsored events, you may be suspended or expelled from school according to the code of student conduct. This offense may rise to the level of violating the “zero tolerance” policy and may also result in criminal charges and prosecution.

**WARNING:** A 17-year-old high school student was expelled after school officials saw a toy gun under the driver's seat of his car in the school parking lot.

**Q: What happens if I bring drugs, alcohol, or tobacco products to school?**

A: Possessing illegal drugs, alcohol, or tobacco products on school grounds or at school-sponsored events violates the law and the code of student conduct. You are subject to suspension or expulsion if you possess these items.

Possessing prescription or over-the-counter medication without permission or for non-medicinal purposes might also violate school rules and the law. If you require prescription or over-the-counter medication during the school day, you should speak to school officials before bringing the medication to school.

To protect your interests, do not bring any of the following items to school:

- Drugs, alcohol, or anything that could be mistaken for drugs or alcohol;
- Prescription drugs or over the counter drugs (check with your school first if you will need either);
- Drug paraphernalia (such as pipes or rolling paper); or
- Tobacco (including dip, snuff, and chew).

**WARNING:** A middle school student gave a classmate a tablet of Midol and was suspended for 13 days.

**Q: Are there consequences at school for my actions outside of school?**

A: Yes. You are expected to follow the rules in the code of student conduct at all times. For example, if are convicted of a serious offense outside of school, you are subject to punishment, including suspension and expulsion, by your school. Serious offenses include gun possession, assault, sex offenses, drug offenses, and theft, among others. To protect your right to an education, you should always avoid at all times situations involving conduct that violates school rules or the law.

**Q: As a student with a disability, what are my rights if I am suspended or expelled from school?**

A: If you a student with a disability, you are subject to the same punishments and are afforded the same rights as students without disabilities. But you also have certain other rights, including the right to a free appropriate public education (which can be at a different site than your home school).

Before imposing a long-term suspension or expelling a student with a disability, the school must conduct a meeting called a Manifestation Determination Review to determine whether the misconduct was primarily caused by the student's disability or the school's failure to provide an appropriate education. The student can remain at his or her home school if the misconduct was primarily caused by the student's disability or the school's failure to provide an appropriate education (unless the misconduct is related to weapons, drugs, or violence). On the other hand, if the misconduct was not primarily caused by the student's disability or the school's failure to provide an appropriate education, then the student can be removed from school but still must receive the education services provided for in his or her Individualized Education Plan (IEP).

## **Searches At School**

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### **Q: Who can search me?**

A: If the principal, teacher, or resource police officer has a reasonable suspicion that you violated a school rule or that you possess a banned item, they may search your person and your belongings.

### **Q: Can the school search the entire student body just because they suspect one student?**

A: No. School officials may not search the entire student body. School officials must have an individualized reasonable suspicion to search you. This means they must suspect that you are violating a school rule or possessing a banned item.

### **Q: What should I do if school officials attempt to search me?**

A: If you are told by a school official that he or she intends to search you and you believe he or she lacks reasonable suspicion, you should object. If the school official persists, permit the search and seek independent legal advice afterwards.

### **Q: Can the school require that I take a drug test?**

A: Yes, but only as a condition for participating in extracurricular activities and athletics. You are permitted to object to taking a drug test, but the school can prohibit you from participating in extracurricular activities and athletics if you refuse. Schools cannot compel you to take a drug test as a condition of attending school.

### **Q: Can they search my locker?**

A: Yes. Lockers are school property; they belong to the school, not to the students. School officials can search your locker at any time without reasonable suspicion, a search warrant, prior notice or your consent.

## Freedom Of Expression

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“First Amendment rights, applied in the light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”

*Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969)

### Introduction

#### **Q: What is the First Amendment and the freedom of expression?**

A: The First Amendment to the Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment protects your right to think and say what you believe. This protection—freedom of expression—extends to every type of view: political, personal, social, religious, and others. For example, the government generally may not stop you from writing a letter to the editor in your local newspaper, speaking out about issues you believe in, joining a club or organization that shares your views, or worshipping in the religion of your choice. Likewise, the government cannot force you to think a certain way, say or write something you disagree with, or join a religion or organization you do not believe in.

However, the First Amendment’s protection is not without limit. There are some instances where your freedom of expression can be restricted.

#### **Q: Can schools restrict my freedom to express myself?**

A: Yes, but only when it unreasonably interferes with the education process. In addition to the right of free expression, young people also have a right to an education. Schools are responsible for ensuring that the right to an education is fulfilled. However, the right of free expression and the right to an education sometimes conflict, and when they do, schools may be permitted to restrict expression. Just as the right of free expression is not absolute, the ability of schools to restrict expression is not without limits.

The remainder of this section explains some of the specific situations where your freedom of expression is protected and where it may be restricted by a school.

### ***Free Speech: What You Can Say (Or Not Say) In School***

#### **Q: Do I have a right to express my opinions in school?**

A: Yes. You have a right to express your opinions in school, even if they are unpopular. This includes sharing your religious or political beliefs with your peers. But schools may regulate the way you express yourself. For example, you can be punished for using vulgar or obscene language. Your school can also impose rules against disrupting class activities, disrespecting peers or teachers, or harassing, discriminating or attacking other individuals or groups. Further, the First Amendment protects your right to distribute literature expressing your views, but the school can place reasonable restrictions on how and when you do so, as long as the same restrictions apply to everyone.

#### **Q: Do I have the right to form a club or organization that expresses a political or religious view?**

A: If your school permits extracurricular clubs and organizations that are not directly related to the school curriculum to operate, then it cannot stop you from forming one simply because your views are unpopular or involve a political or religious subject. This does not mean that your school is required to provide you with a faculty sponsor, fund your activities, or allow you to use the school's resources to conduct your activities.

If your club or organization's activities will interfere with the orderly conduct of school, the school may prohibit it from operating. For example, if a club or organization expresses views that discriminate against other people or promote unlawful behavior, the school can prohibit it.

#### **Q: Do I have a right to challenge decisions to ban books from my school library?**

A: Absolutely. Because schools are responsible for developing and teaching an education curriculum, they have discretion to decide what books your school library will maintain. The First Amendment, however, protects your right to express your opinion by challenging decisions to ban books.

#### **Q: How do I challenge these decisions?**

A: You can write letters to your political leaders or your local newspaper, attend school board meetings, discuss the issue with your peers, and express yourself in any other manner that does not directly interfere with the orderly conduct of the school. So while your school may be able to ban a book from

your library, it cannot stop you from disagreeing, expressing your disagreement, and trying to bring about change.

According to the American Library Association, the following books were the subject of the most attempts in 2005 to be removed from school libraries:

- It's Perfectly Normal" by Robie H. Harris
- Forever by Judy Blume
- The Catcher in the Rye by J.D. Salinger
- The Chocolate War by Robert Cormier
- Whale Talk by Chris Crutcher
- Detour for Emmy by Marilyn Reynolds
- What My Mother Doesn't Know by Sonya Sones
- Captain Underpants series by Dav Pilkey
- Crazy Lady! by Jane Leslie Conly
- It's So Amazing! A Book about Eggs, Sperm, Birth, Babies, and Families by Robie H. Harris

**Q: Do I have to salute the American flag or stand during the Pledge of Allegiance?**

A: No. Your school cannot force you to salute the flag or stand during the Pledge of Allegiance. Your school also cannot require you to participate in the Pledge of Allegiance. Your school can, however, require you to remain quiet and respectful during the Pledge of Allegiance.

***School Papers & Publications: What You Can Write In School***

**Q: Can I be punished for what I write in a school assignment?**

A: Yes. You should be careful about what you write in your school assignments. As a general matter, the same rules that apply to verbal speech apply to writings. Your school may be able to punish you for using obscene words or violent images that can be construed as a threat. You should check with your teacher before submitting an assignment depicting obscenity or violence.

**Q: Do I have the right to write what I want in the school newspaper, magazine, or yearbook?**

A: No. Schools can decide what can be published in school newspapers and yearbooks because those publications bear the reputation of the school. The principal has the authority to stop controversial stories from being printed. A school's rules regarding its publications must be applied evenly to all student organizations. In other words, a school cannot single out one organization or publication for censorship or prior review of material that will be printed.

If you print untruthful information, you may face a lawsuit for "libel." Libel is a civil court action where a person who publishes false and damaging information about another person can be required to pay money damages to that other person.

**Q: What can I write in the school newspaper, magazine, or yearbook?**

A: As a general matter, you should not print obscene, disruptive, untruthful, or attacking material.

**Q: What about publications produced by students but not affiliated with a school?**

A: You are entitled to express your opinions in publications you produce independent of the school. Schools may place restrictions on how and when you distribute such publications at school in order to ensure that school activities are not disrupted, but they do not have the same censorship authority they have over school-affiliated publications. Again, you should be careful not to publish any untruthful information, as you could be sued for "libel."

***Dress Codes: What You Can Wear In School***

**Q: Do I have the right to wear whatever I want in school?**

A: No. Schools can impose dress codes restricting what you wear. In particular, clothing that distracts others from class activities or poses health and safety risks can be banned. For example, schools can prohibit clothes that are physically revealing, promote drugs, tobacco or alcohol, or contain obscene words or pictures. Dress codes must be applied evenly to all students or they are unlawful.

**Q: Can the school ban my hairstyle?**

A: It depends. The law in this area is not settled. You should check your school's code of conduct for guidance before you try a radical hairstyle. However, like dress codes, rules on hairstyles must be applied evenly to all students or those rules are unlawful.

***Religion In School***

**Q: Can religion be taught and discussed in school?**

A: Yes. There is a difference between teaching about religion and imposing religious views. Schools may not force you to believe in certain religious views. Likewise, schools may not prohibit you from expressing your own religious views, subject to permissible speech restrictions as discussed above.

**Q: Can my school impose a mandatory moment of silence?**

A: Yes. But your school cannot force you to use that time to pray or to participate in a religious activity. A moment of silence simply means time where speaking and other activities are prohibited.

**Q: Am I allowed to pray in school?**

A: Yes. A school may not prohibit you from praying. However, just as with the general rules governing speech discussed above, prayer that disrupts the normal functioning of school can be restricted.

**Q: Am I allowed to lead a prayer at graduation or another school function?**

A: It depends. The law on this issue is unsettled. A prayer that is entirely student-organized and student-led, without any involvement by the school is probably allowed. However, the First Amendment prohibits schools from supporting any one religious view. Since a student prayer at a school function may be seen as endorsing a religious viewpoint, schools may be able to restrict student-organized or student-led prayer.

**School Transfer Rights**

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***No Child Left Behind: Your Right To A Quality Education***

**Q: What is the No Child Left Behind Act?**

A: The No Child Left Behind Act (NCLB) is a federal law that requires states and school districts to ensure schools meet certain quality standards each year. Students in schools that fail to make “adequate yearly progress” have a right to transfer to another school if there are schools making adequate yearly progress in the same school district.

**Q: How does NCLB work?**

A: Students are required to take standardized performance tests each year. In Virginia, these are called the Standards of Learning exams. Schools are measured for adequate yearly progress based on student performance on these tests.

If your school does not make adequate yearly progress two years in a row, you have a right to transfer to a school that making adequate yearly progress if there is such a school in your school district. You do not have to pay

for transportation. If you remain in your school and it fails to make adequate yearly progress three years in a row, you may be entitled to receive tutoring and other educational services at no cost.

**Q: How do I know if my school makes adequately yearly progress?**

A: The Virginia Department of Education maintains results of annual performance tests on its website: [www.pen.k12.va.us/VDOE](http://www.pen.k12.va.us/VDOE). Search under “Adequate Yearly Progress and “School Report Cards.” You can also ask an administrator at your school.

**Q: How do I take advantage of the rights NCLB gives me?**

A: If your school failed to make adequate yearly progress two years in a row or more and you believe you are entitled to a school transfer or extra support services, you should put your request for a transfer in writing to your school principal.

**Education Duties**

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***Diplomas And The Virginia Standards of Learning***

**Q: What are the Standards of Learning?**

A: The Standards of Learning (“SOLs”) are established by the Virginia legislature. You are required to take SOL tests in grades three (3) through twelve (12). The tests cover practically every subject, including math, science, English, history, social science, and computer technology.

In order to earn a standard or advanced diploma, students must pass their SOL exams. Failure to pass the SOLs in elementary or middle school can lead to students being held back from advancing to the next grade.

**Q: What do I have to do to earn a high school diploma?**

A: Virginia confers three types of high school diplomas. To earn a Standard Diploma, you must pass six (6) high school-level SOL tests and earn twenty-two (22) high school course credits. To receive an Advanced Studies Diploma, you must pass nine (9) high school-level SOL tests and earn twenty-four (24) high school course credits. To earn a Modified Standard Diploma, which is only available to students with disabilities (who are also allowed to pursue a standard diploma), a student must earn twenty (20) high school course credits and pass the eighth (8th) grade English and math SOLs.

**Q: What happens if I do not pass a SOL test?**

A: You are allowed to receive extra help—called “remediation”—which can come in the form of after-school or summer school programs. You also may

be able to retake the test you failed. Often students who prepare more and retake a test are able to pass the second time around. If you fail an SOL, you should talk to your guidance counselor.

**Q: What if I do not pass enough SOL exams to graduate?**

A: If you do not pass enough SOL tests to graduate from high school but you complete the required coursework, you may receive a Certificate of Completion. Most four-year colleges will not admit students with a Certificate of Completion, but you can still go to community college. If you believe you are in danger of failing a SOL test, you should reach out to your teachers and school counselors for help.

# PART II

## Your Rights And The Police

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To protect yourself during encounters with the police, you need to be aware of your rights and how to exercise them. The Bill of Rights—Amendments 1 through 10 to the Constitution—establishes your constitutional rights. Under the Fourth Amendment, you have the right to be free from unreasonable searches and seizures. The Fifth Amendment gives you the right to not incriminate yourself. This section discusses the practical implications of these rights.

In dealing with the police, you can exercise your rights by: (1) saying nothing; (2) refusing to consent to a search; and (3) asking for a lawyer.

## Rights With The Police On The Streets

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**Q: What are my rights if I am stopped on the street?**

A: You have the right to remain silent. You have the right to a lawyer.

**Q: Do I have the right to not talk to the police?**

A: Yes. You do not have to tell them anything except basic identifying information such as your name and address. If requested, you must produce identification.

**Q: If a police officer starts to ask me questions, what should I do?**

A: Ask the police officer: “Am I free to leave?” If the police officer says “yes,” then you can leave. If the police officer says “no,” then he or she must read you your Miranda rights.

**Q: What are my Miranda rights?**

A: You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense.

**Q: Do I have to talk after a police officer reads the Miranda rights to me?**

A: No. You have the right to remain silent. You cannot be punished for invoking your Miranda rights.

**Miranda: Know vs. Use?**

Virtually all Americans know or at least have heard of their Miranda rights. But how many people use their Miranda rights? Very few, actually do. Studies have shown that approximately 80% of suspects waive their Miranda rights and talk to the police.

**Rights And Police Searches**

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**Q: What is a search?**

A: A search by the police can be looking through your personal belongings (such as your locker, purse, backpack, car), asking you to empty your pockets, or performing a pat-down or a strip search. A search must be “reasonable” under the facts and circumstances. One factor in determining the reasonableness of a search is what is being searched for.

**Q: When are the police allowed to search me and/or my personal belongings?**

A: The police need a warrant or probable cause before they can search you. “Probable cause” exists when a police officer has reason to believe that you probably committed a crime. This belief must be based on fact and circumstance, not on suspicion. The police can search you without a warrant in order to prevent harm or the destruction of evidence. The police can also search you without a warrant if they place you under arrest. Finally, the police can “stop and frisk” you if they have a reasonable suspicion that you are breaking the law and that you have a weapon.

**Q: What can I do if the police ask to search me and/or my personal belongings or ask me to agree to be searched?**

A: You have the right to be free from unreasonable searches and seizures, and therefore, you have the right to refuse to agree to a search if the police do not have a search warrant or probable cause. If you agree to a search, it becomes legal even if the police did not have a search warrant or probable cause.

**Q: If I refuse to agree to a search but the police still want to search, what should I do?**

A: Do not physically resist a search even if you think it is illegal and do not attempt to run away. Resisting or running will probably get you into trouble and may lead to criminal charges against you.

**Q: Can the evidence found during an illegal search be used against me in court?**

A: Probably not. If you believe that the evidence was obtained by the police in an illegal search, you should tell your lawyer exactly what happened so that your lawyer can challenge the search in court.

## **Rights At The Police Station**

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**Q: What can I do if the police take me to the police station?**

A: You can ask for a lawyer and your parents and you can refuse to say anything else.

**Q: Can the police lie to me or make up evidence against me just to try to get me to talk?**

A: Yes. The police can lie and use other “tricks” such as pretending that other evidence exists. Regardless of what the police say, you can invoke your right to remain silent. The police may say:

- “If you tell the truth, you can go home;”
- “If you tell on your friends, you will not get into trouble;”
- “If you tell the truth, you do not need a lawyer;”
- “If you do not confess, you will be tried as an adult.”

The police have no control over what, if any, crimes you are charged with. You can ask for a lawyer and then invoke your right to remain silent and refuse to talk to the police.

**Q: Can I have my parent(s) present when the police question me?**

A: You can ask to have your parents present during questioning, but the police can refuse to allow it.

**Q: What can I do if my parents tell me to talk to the police?**

A: You can invoke your right to remain silent. If you talk to the police, anything that you say can and will likely be used against you. You should also be careful about what you tell your parents because they can be forced to repeat anything that you tell them in court.

# PART III



## The Virginia Juvenile Justice System

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The Virginia Juvenile Justice System deals with alleged criminal offenses against persons who are eighteen (18) years and younger. Understanding the juvenile justice system and your rights will protect your interests.

There are some serious charges against juveniles which can result in a juvenile case being transferred to the Circuit Court, which is also often called “adult” court. This handbook does not address that situation.

## Entering The Juvenile Justice System

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### **Q: How do you enter the juvenile justice system?**

A: Ordinarily, you enter the juvenile justice system when a person alleges that you committed an act that would be considered a crime if you were an adult. You will also enter the system if you have been arrested by the police.

### **Q: What happens if someone alleges that I committed a crime or if I am arrested?**

A: If an allegation is made against you or if you are arrested, you will probably be referred to an intake officer. The purpose of intake is to determine whether you might have any connection to an alleged offense and, if so, how best to address your involvement—through counseling or criminal charges. Intake is not a court proceeding. The intake officer will interview you, the person who made an allegation against you (if any), the police officer that arrested you (if any), and persons familiar with your home situation.

After completing these interviews, the intake officer will decide whether to take action related to your situation. The intake officer has three options: (1) take informal action, such as referring you to counseling; (2) take formal action by filing a petition charging you with a criminal offense; or (3) take no action at all.

### **Q: What should I tell the intake officer?**

A: You should tell the truth to the intake officer. While the intake officer will use the information you provide to decide how to handle your situation. Anything you tell the intake officer cannot be used as evidence against you in a criminal case. If you refuse to communicate with the intake officer or lie, he or she may have no choice but to file a petition against you. Communicating and telling the truth may help you avoid criminal charges altogether and instead obtain services that will assist you.

**Q: What happens if the intake officer decides to file a petition?**

A: The intake officer will decide whether you should be released to your parents or guardian(s) or whether you should be detained in a detention facility for juveniles. This decision is based on your perceived risk to yourself and your community.

**Q: What happens if the intake officer decides to detain me?**

A: If the intake officer decides to detain you, a detention hearing will be held within 72 hours in the Juvenile and Domestic Relations District Court. At that time, the court will decide whether you should continue to be detained and whether there is sufficient evidence for the petition to go forward.

**Q: What happens at a detention hearing?**

A: If you do not already have a lawyer, you can have a lawyer appointed to represent you. At the hearing, the judge will decide whether or not you should remain in detention.

**Q: How does the judge decide who to detain and who to release?**

A: The judge will consider whether the individual is a danger to himself, herself, or the community. The judge will also consider whether the individual will appear in court when told to. You can have people such as your parents or guardians speak on your behalf at the hearing.

**Obtaining An Attorney**

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**Q: Do I have a right to an attorney?**

A: Yes. If you do not have an attorney the first time you go to court, the judge will ask you whether you want one appointed for you. Your right to an attorney is guaranteed under the Constitution. If you or your parents cannot afford to pay an attorney, the court will appoint and pay an attorney to represent you.

**Q: What should I tell my attorney?**

A: Before you tell your attorney anything, listen first. Your lawyer will explain the charges against you, the possible consequences, and your rights. Your lawyer will then probably ask you questions. Answer your attorney's

questions truthfully and fully. Almost everything you tell your lawyer is confidential and cannot be revealed to anyone, even your parents.

**Q: What should I do if I do not get along with my attorney or if we have difficulty communicating?**

A: You should address those concerns directly with your attorney. If you do not feel that your attorney is doing an adequate job representing you and you have already addressed your concerns with your attorney, you can ask the court to appoint a new lawyer for you. Obtaining a new lawyer is difficult though. You must be able to explain why you think your lawyer is not effective. Not liking your attorney is not a reason to obtain a new one, and the court is unlikely to appoint a new lawyer for that reason.

**The Court Process**

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**Q: What happens in a case in juvenile court?**

A: Generally, there are three phases to each case in juvenile court:

- (1) the first appearance (also sometimes called the detention hearing);
- (2) the adjudication (also called the trial); and
- (3) the disposition (also called the sentencing).

Decisions are made at each phase of the case, so it is important to understand should occur at each step.

**Q: What is the first appearance?**

A: The first appearance is a hearing in court where the judge reads the charges against you and asks you how you plead to the charges. If you plead not guilty at the first appearance, you can always change your plea later. The judge will also ask you whether or not want a lawyer. You have the right to a lawyer. After your first appearance, the next court hearing will be the trial.

**Q: What is the adjudicatory hearing?**

A: The adjudicatory hearing is a trial where the court determines innocence or guilt. In juvenile cases, the adjudicatory hearing takes place in front of the judge. The adjudicatory hearing takes place after the first appearance. If you are detained, it must take place within 21 days after the date you were detained.

**Q: What happens at the adjudicatory hearing?**

A: At the adjudicatory hearing you have the choice of entering a guilty plea or going to trial. If you choose to enter a plea of guilty, you are admitting to the

judge that you have committed the acts that you are charged with having done.

If you decide to enter a plea of not guilty and go to trial, a lawyer representing the state (called the Commonwealth Attorney) will present evidence trying to show beyond a reasonable doubt that you committed the offense you are charged with. The evidence will be presented through testimony from witnesses and, if appropriate, through physical evidence, such as documents or things used to carry out the offense. You and/or your lawyer will have the opportunity to question the witnesses who are testifying against you and to call witnesses and offer evidence on your behalf.

After all the evidence is presented the Commonwealth Attorney and you and/or your lawyer will have the opportunity to make a closing argument. The judge will then decide whether the Commonwealth has proven beyond a reasonable doubt that you are guilty of the charged crime.

**Q: Do I have to testify at the trial?**

A: No. The Constitution says that you do not have to testify at a trial when you are the defendant.

**Q: What happens if I am found not guilty?**

A: You are free to leave, or if you have been detained, you will be released the day you are found not guilty.

**Q: What happens if I am found guilty or if I plead guilty?**

A: Typically, the judge will set the case for a disposition (or sentencing hearing) and ask the probation officer assigned to your case to provide the court with a social history report describing your life, your involvement with the court, if any, and your current situation. The judge will also decide whether you should be detained until your dispositional hearing.

**Q: What is a dispositional hearing?**

A: A dispositional hearing is when a juvenile is sentenced for an offense. To help the judge decide the consequence for committing the offense, a social history report is often prepared. This report is based on interviews with you, your family, other people who know you, and persons involved in the offense, as well as information contained in education and other records. The judge uses the information contained in the report to decide how to resolve your case.

**Q: What are the consequences for committing a juvenile offense?**

A: The judge has a variety of options, which can and are often used in combination, including:

- Placing you on probation and imposing conditions such as curfews, regular meetings with a probation officer, no further criminal law violations, regular attendance at school, and participation in counseling or other services;
- Imposing conditions on your parents to participate in certain activities or services;
- Ordering you to participate in community service;
- Placing you on house arrest or electronic monitoring;
- Transferring your legal custody to another relative or guardian if the court finds that it is not in your best interests to remain at home;
- Placing you in a residential treatment program or group home;
- Ordering you to pay restitution for any damage you have caused; or
- Committing you to the Department of Juvenile Justice, which means that you will live in a juvenile detention center for a period of time.

**Q: If I am found guilty, can I appeal?**

A: Yes. You have a right to appeal the court's determination that you are guilty and to appeal the consequences that are imposed. You must file an appeal with 10 days of your dispositional hearing.

**Developed by the  
Virginia State Bar Young Lawyers Conference  
and JustChildren**

**For more information, please contact:**

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