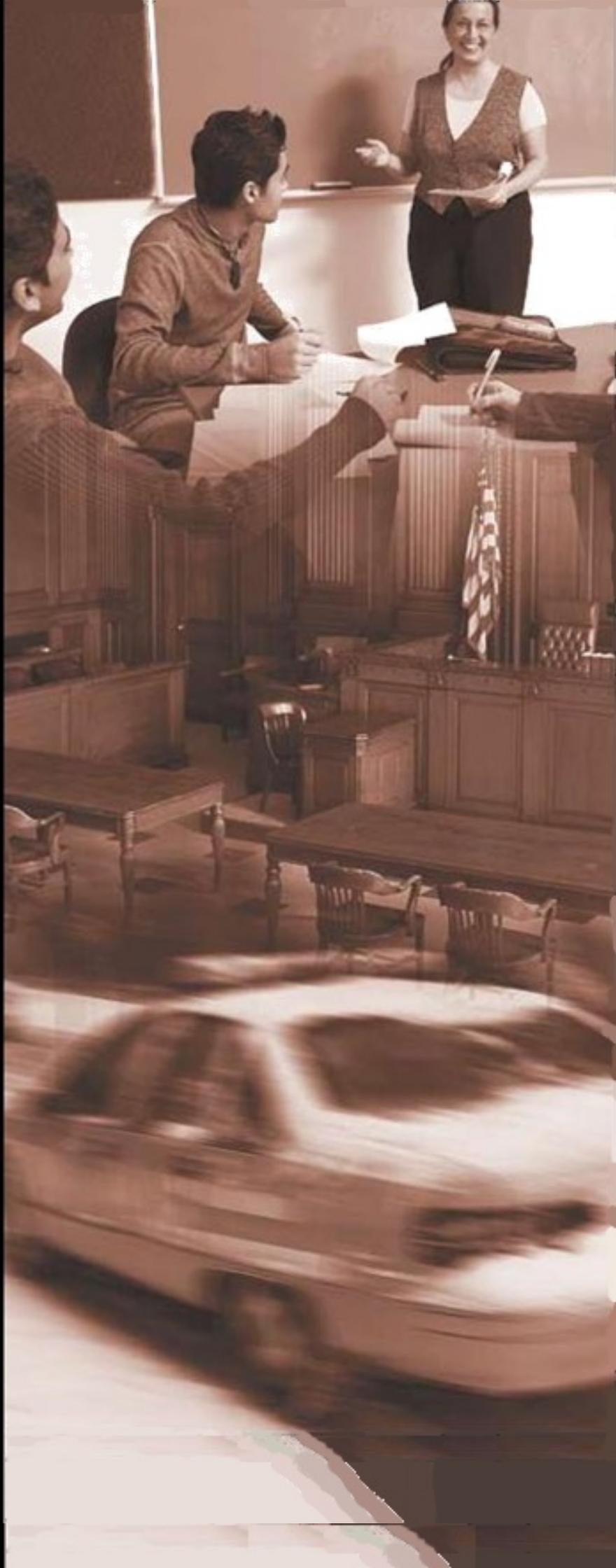


# Juvenile Rights Handbook

Your Rights and Responsibilities in the Schools,  
with the Police, and in the Courts



This Handbook was developed as a joint project of JustChildren and the Virginia State Bar Young Lawyers Conference. The information contained in this Handbook is general legal information in order to give juveniles a brief overview of their rights. It is not intended to be a precise statement of law. It does not establish an attorney-client relationship and should not be construed as a legal opinion or legal advice. If you have a question about how this applies to you or a specific factual situation, you should consult with an attorney. The Virginia State Bar provides a lawyer referral service, which can be reached at (804) 775-0808 or toll-free at 800-552-7977.

The JustChildren of the Legal Aid Justice Center is Virginia's largest children's law program. The program provides free legal representation to low-income children who have unmet needs in the education, foster care, and juvenile justice system. JustChildren's work consists of direct representation, community education, and other statewide advocacy addressing important issues impacting all of Virginia's children.

The Young Lawyers Conference (YLC) is part of the Virginia State Bar, the state agency charged with regulating lawyers licensed to practice in Virginia. The mission of the YLC is to allow young lawyers to participate in Virginia State Bar activities and serve the legal profession and the public.

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# PART I

## Education

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You have the right to an education. In fact, Virginia law requires that everyone between 5-18 years old attend a public, private or religious school or receive home instruction. However, when you are in school, you still have to follow the rules.

## School Discipline

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### **Q: What can get you suspended or expelled?**

A: Lots of things can get you suspended or expelled. Some reasons for suspension or expulsion include:

- Too many unexcused tardies;
- Insulting teachers or other students;
- Threatening teachers or other students;
- Damaging school property;
- Associating with gangs;
- Throwing objects;
- Fighting;
- Committing indecent exposure (for example, nudity);
- Possessing or using drugs, look-alike drugs, or tobacco (including dip)\*;
- Spitting;
- Smoking;
- Engaging in sexual conduct including harassment; or
- Possessing weapons\*.

\*Previously, if you possessed a weapon or drugs at school, the school was required to automatically expel you. This is no longer the case, and schools in Virginia must take into consideration the specific facts of your case for any recommendation for expulsion.

At the beginning of each school year, school staff will review the code of student conduct with all students. The code of student conduct will tell you exactly what the rules are, and what you have to do to stay out of trouble. You and your parents have to sign that you received and reviewed the code of student conduct. Read your code of conduct carefully, because it may be your only-and is certainly your best-source of information on what type of behavior may lead to disciplinary actions.

**Q: What if I am suspended from school?**

A: There are two types of suspensions, short-term and long-term. Short term suspensions may be ordered by a principal, assistant principal, or any teacher.

**Short term Suspensions (10 school days or fewer):**

You have a right to explain your side of the story before being suspended. If you are suspended anyway, you and your parents have a right to a written or oral notice describing (1) reasons for suspension, and (2) length of suspension. It must also include: (1) information about other options for education during your suspension, and (2) explain that you have the right to return to school once the suspension ends.

If you don't agree with the version of events 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. You should do this in writing and you should check your code of conduct at your school to determine how long you have to do this.

**Long-term Suspensions (between 10 school days and 365 calendar days):**

You have a right to explain your side of the story before being suspended. If you are suspended anyway, you and your parents have a right to a written notice describing (1) reasons for suspension, (2) length of suspension, and (3) information about 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 don't agree with the decision, you may appeal to the school board and then to the local circuit court. You usually only have a short amount of time to appeal to the School Board, so you should check your code of conduct at your school. Once you appeal to the School Board, they have 30 days to schedule a hearing. If you disagree with their decision, you have 30 days to appeal to the local circuit court.

Usually you will receive notice of the cause for the disciplinary action and an opportunity to explain your side of the story before you are removed from school. However, if you are determined to be a continuing danger to people or property at the school, or an ongoing threat of disruption, you may be removed immediately and only get more information and an opportunity to explain later.

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

A: No, but lawyers can be very helpful. If you or your family cannot afford an attorney, you should contact your local Legal Aid Office right away. You can and should also 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 (greater than 365 calendar days) and requires that you apply for re-admission the next year. The school must provide written notice of the intent to expel, stating the reasons for expulsion, identifying available alternative community-based educational programs, expectations for you while you are out of school and advising you of your right to appeal. **IF YOU ARE FACING EXPULSION, YOU SHOULD ALWAYS CONSIDER APPEALING THE CASE. THERE IS NOTHING TO LOSE.**

**Q: Is my school still required to provide me with an education?**

A: That depends. If you are a student with an IEP, the school must still provide you with educational services. If you are a general education student, the school board can allow you to attend an alternative school program, but they do not have to do this. Nothing prevents your parents from home-schooling you or paying for an alternative program, but the school district is not required to provide you with an education during your time of suspension or expulsion.

**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 well 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 anything used to threaten or hurt others. This includes knives, pen knives, screwdrivers, blades, or firearms. “Look-

**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 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 may be suspended or expelled if you possess these items.

Possessing prescription or over-the-counter medication without permission might also violate school rules and the law. If you need prescription or over-the-counter medicine during the school day, you should talk to school officials before bringing the medicine to school.

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 unless you have school permission;
- Drug paraphernalia (such as pipes or rolling paper); or
- Tobacco (including dip, snuff, and chew).

NOTE: “Imitation” drugs are treated like real drugs for disciplinary purposes.

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

**Q: Can I get punished at school for what I do outside of school?**

A: That depends. Most suspensions and expulsions result from acts at school or school-sponsored activities. However, you may be suspended or expelled for acts off of school property when the acts lead to a court judgment of delinquency, a conviction for very serious crimes, or a charge that would be a felony if committed by an adult.

Bullying may also lead to school discipline. Bullying is defined in the Virginia Code as “any aggressive and unwanted behavior that is intended to harm, intimidate, or humiliate the victim; involves a real or perceived power imbalance between the aggressor or aggressors and victim; and is repeated over time or causes severe emotional trauma. It includes cyber bullying, but does not include ordinary teasing, horseplay, or argument. It’s best to stay away from any behavior that may be characterized as bullying.

State law requires your local school board to implement anti-bullying policies and procedures, and encourages teachers and other school employees to report bullying.

Some conduct that is considered bullying:

1. Physical intimidation, taunting, name calling, and insults
2. Comments regarding the race, gender, religion, physical abilities or characteristics of associates of the targeted person
3. Falsifying statements about other persons
4. Use of technology such as e-mail, text messages, or Web sites to defame or harm others.

**Q: Can a teacher use force to punish me?**

A: Corporal punishment-using pain as a form of discipline-is prohibited, but teachers and school employees are allowed to use reasonable and necessary physical force to stop a student who poses a danger to himself or others, or to school property. Excessive force by school employees may be investigated and punished, so if you experience or witness abusive treatment of yourself or another student, you should report it immediately.

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

A: If you are a student with a disability, you may be punished the same way and have the same rights as students without disabilities. But you also have some other rights.

You have the right to a free appropriate public education at a different site than your home school.

If you receive special education services, the school must conduct a meeting called a Manifestation Determination Review before giving you a long-term suspension or expulsion. The meeting is meant to determine the cause of the misconduct. Your school cannot suspend you if they determine that your conduct was caused by, or directly and substantially related to your disability; OR if your behavior was the direct result of your school's failure to implement your IEP. If your conduct is related to weapons, drugs or inflicting serious bodily injury upon another person, then your school can suspend you even if they find your conduct was a manifestation. Even if they remove you from school, you still must receive the education services provided for in your IEP.

## Searches At School

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**Q: Do I have any rights if a principal, teacher, or school resource officer wants to search me?**

A: You still have Fourth Amendment rights. The school needs reasonable, individualized suspicion that you have violated a law or school rule in order to search you, unless you volunteer to be searched. If they do not have sufficient cause to search you, they may try to get you to consent to a search. You do not have to consent to a search.

You have a limited expectation of privacy in your backpack and some other personal items like purses and wallets. Whether or not they can search such items depends on whether it is within the scope of the violation they suspect.

**Q: Can the school search the entire student body?**

A: In some cases, yes. School officials can do blanket/random searches of lockers, they can use metal detectors at school entrances, and they can use drug detection dogs. If they have suspicion based on a tip that someone in a particular class has a gun, some courts have said the school can search that entire class.

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

A: You should tell them you do not want to be searched. But if they still want to do it, do not resist or talk back.

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

A: Yes, but only as a condition for doing sports or other school activities. You are allowed to object to taking a drug test. Schools cannot keep you out of school if you refuse, but they can keep you out of sports, clubs and other activities.

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

A: It depends on your local school board policy. If your school says that lockers are school property; they belong to the school, not to the students and school officials can search your locker at any time for any reason without a search warrant and without your knowledge or approval. However, if your school policy says that lockers are private, then they must have reasonable and individualized suspicion to search your locker.

**Q: Can they search my phone or laptop?**

A: Yes. Under the same circumstances as they can search you-if they have a

## 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 worshiping 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.

This does not mean you can say whatever you want at school, whenever you want to say it. The school can still set some limits.

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

A: Yes, they can if what you are saying, or how you are saying it, interferes with the education of other students.

The rest of this section gives examples of when schools can and cannot put limits on your speech.

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

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**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 friends. But schools may have rules about the way you express yourself. For example, you can be punished for using vulgar or obscene language. You can also be punished if you disrupt class activities or disrespect, harass, or attack others. The First Amendment protects your right to distribute information expressing your views, but your school can tell you how and when you can do so, as long as the same rules 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 allows extracurricular clubs and organizations that are not directly related to the school curriculum, then it cannot stop you from forming one. This does not mean that your school has to provide you with a faculty sponsor or funding.

If your club or organization's activities will disrupt the school, the school may shut it down. For example, if a club expresses views that discriminate against other people, the school can prohibit it.

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

A: Absolutely. Even though schools are in charge of picking books for the library, you have the right to challenge the decision to ban a book.

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

A: You can write letters to your political leaders or your local newspaper, attend school board meetings, talk to other students, and express yourself in any other manner that does not interfere with the conduct of the school.

**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 force you to say the Pledge of Allegiance. Your school can, however, require you to remain quiet and respectful during the Pledge of Allegiance.

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

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

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**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. Your school may be able to punish you for using obscene words or violent images. You should check with your teacher before submitting an assignment that contains obscenity or describes violent activities.

**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 any obscene, disruptive, untruthful, or attacking material.

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

A: You are entitled to express your opinions in publications you produce independent of the school. Schools may have rules on how and when you can 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-sponsored 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. 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, contain obscene words, pictures, or gang signs and symbols. School 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.

**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, but a school may have rules to make sure that prayer does not disrupt a school's operation.

**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 limit 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 make sure 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 in Virginia?**

A: In 2012, Virginia was one of many states that received a waiver from the NCLB requirements. This means that while Virginia schools still have to collect information about their schools and whether they have met certain quality standards, students in Virginia do not have a right to transfer from their school because their school has failed to meet up to those quality standards.

## 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.

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

A: Virginia currently confers 7 types of high school diplomas. To earn a Standard Diploma or a Standard Technical 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, or an Advanced Technical Diploma, you must pass nine (9) high school-level SOL tests and earn twenty-four (24) high school course credits. To earn a General Achievement Diploma, you must complete 20 high school credits, not be subject to compulsory attendance, and pass the GED exam. To earn a Modified Standard Diploma, which is only available to students with disabilities, a student must earn twenty (20) high school course credits and pass the eighth (8th) grade English and math SOLS. This diploma will not be available to 1st time 9th graders in 2013-2104 and beyond. Finally, students with disabilities may earn a Special Diploma by meeting the requirements of their IEP. Students with disabilities may also earn any of the other diplomas available to students without disabilities.

### SOLs.

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

A: Schools must offer remediation (meaning extra help such as summer school) if you fail your SOL test. In high school your child has the right to retake failed SOL tests. 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. Your school cannot retain you in the same grade simply because you failed an SOL test.

**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 when you are questioned by the police, you need to know about your rights and what to do. Our United States Constitution gives you certain rights, and the first 10 Amendments to the Constitution are called "The Bill of Rights." The Fourth Amendment says the police cannot stop you, search you or take your belongings without a good cause. They may not arrest you without probable cause to believe you have committed a crime. The Fifth Amendment gives you the right not to say anything that might make you seem to be guilty of a crime.

When you are dealing with the police, you have the right to (1) say nothing, (2) refuse to consent to a search, and (3) ask 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 as soon as you can contact one but you will not get a lawyer until you are brought to court.

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

A: Yes. Under Virginia law, you do not have to identify yourself nor must you 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 not talking.

### **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 “rea-sonable” under the facts and circumstances. One way to know if a search is reasonable is what is being searched for.

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

A: If the police have some reasonable suspicion-more than just a mere hunch-that you are participating in some illegal activity, they can stop you for a brief investigation and limited search. During this stop, they can ask you to identify yourself. If they also have reasonable suspicion to suspect that you are armed and dangerous, they can pat you down for weapons, but if they find contraband, it may be used against you. They are allowed to restrict your movement for a limited time, until they have either confirmed their suspicion or determined that you are not doing anything illegal.

If they discover any evidence of illegal activity during their limited investigation that gives them “probable cause” that you are committing a crime, they may place you under arrest and do a more thorough search.

NOTE: Do not give police false information during any kind of investigation. They will almost certainly figure out that you are lying and you may face additional charges. It’s better to say nothing at all than to give false information.

### **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, probable cause, or reasonable suspicion (reasonable suspicion only gives the police a limited pat down). 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

**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.

**Q: Can the police search my car?**

A: A car can be stopped and searched if police have “probable cause” to believe it contains contraband or evidence of a crime. During a stop, police may look into the passenger compartment and anything in plain sight may allow them to develop probable cause and conduct a more thorough search.

Police also can stop your car if the officer has a “reasonable suspicion” that you have violated a traffic law. If the officer reasonably believes a search is necessary for his protection, he can then also search your car. If he does not reasonably believe he is in danger, and he does not have probable cause to believe your car contains contraband or evidence of a crime, the officer cannot search your car, unless you give consent. If they do have a legal basis for searching the car, you cannot obstruct the search.

**Q: Can police search me if they stop my car, or if I’m a passenger in someone else’s car?**

A: Police cannot automatically pat-down all the passengers in a vehicle. They need to have individualized suspicion that you are committing a crime in order to frisk you during a traffic stop.

## **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 use 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.

## The Virginia Juvenile Justice System

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The Virginia Juvenile Justice System deals with suspected criminal offenses by 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 says that you did something 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 says that I committed a crime or if I am arrested?**

A: If an accusation 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 crime 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 accusation against you (if any), the police officer who arrested you (if any), and persons familiar with your home situation.

After completing the interviews, the intake officer decides how to handle your situation. The intake officer has three options: (1) informal action, such as referring you to counseling; (2) formal action by filing a paper (a “Petition”) charging you with a crime; or (3) no action at all.

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

A: You should tell the truth to the intake officer. 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 talk 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 help 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 kept in a detention facility for juveniles.

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

A: If the intake officer decides to put you in a detention facility, a detention hearing will be held within 3 days in the Juvenile and Domestic Relations District Court. At that time, the court will decide whether you should continue to be held and whether there is enough 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 you are a danger to yourself or the community. The judge will also consider whether you 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 first discuss your concerns with your attorney. After that, if you do not believe your attorney is doing a good job representing you, you can ask the court to appoint a new lawyer. Getting a new lawyer appointed is difficult though. You have to explain why you think your lawyer is not doing a good job. 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 steps 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).

You make decisions at each part of the case, so you need to understand what 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 you 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 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 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 charged offense. The evidence will be presented through witness testimony. There could be physical evidence, such as documents or items used to commit the crime. You and/or your lawyer may question the witnesses who are testifying against you and to call witnesses and offer evidence on your behalf.

After all evidence is presented, the Commonwealth Attorney and you and/or your lawyer may make a closing argument. The judge then decides 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 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 decide your case.

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

A: The judge has many 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;
- Making your parents participate in certain activities or services;
- Making you participate in community service;
- Placing you on house arrest or electronic monitoring;
- Giving legal custody of you 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;
- Making you 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 correctional 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 of guilt and the consequences that are imposed. You must file an appeal within 10 days of your dispositional hearing.

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

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