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HOUSE BILL NO. 1260

Offered January 24, 2000

A BILL to amend and reenact §§ 2.1-757 and 2.1-758 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 11 of Title 16.1 an article numbered 8.1 containing sections numbered 16.1-277.2 through 16.1-277.9, relating to finding of child not responsible because of mental illness or mental retardation.

Patrons—Darnier and McDonnell; Senator: Trumbo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-757 and 2.1-758 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 11 of Title 16.1 an article numbered 8.1 containing sections numbered 16.1-277.2 through 16.1-277.9 as follows:

§ 2.1-757. State pool of funds.

A. Effective July 1, 1993, there is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriations act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are:

1. To place authority for making program and funding decisions at the community level;
2. To consolidate categorical agency funding and institute community responsibility for the provision of services;
3. To provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youths and families; and
4. To reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 56 below in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the purpose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. Children with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent foster care placements, and children placed through parental agreements, entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;

4. Children placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program; and

5. Children committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14; and

6. *Children found not responsible because of mental illness or mental retardation.*

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient (i) to provide special education services and foster care services for children identified in subdivisions B 1, B 2 and B 3 of this section, and (ii) to meet relevant federal mandates for the provision of these services, and (iii) *to provide necessary services to children found not responsible because of mental illness or mental retardation.* The community policy and management team shall anticipate to the best of its ability the number of children for whom such services will be required and reserve funds from its state pool allocation to meet these needs. Nothing in this section prohibits local governments from requiring parental or legal financial contributions, where not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale

INTRODUCED

HB1260

60 based upon ability to pay, as provided in the appropriation act.

61 D. When a community services board established pursuant to § 37.1-195, local school division, local
62 social service agency, court service unit, or the Department of Juvenile Justice has referred a child and
63 family to a family assessment and planning team and that team has recommended the proper level of
64 treatment and services needed by that child and family and has determined the child's eligibility for
65 funding for services through the state pool of funds, then the community services board, the local school
66 division, local social services agency, court service unit or Department of Juvenile Justice has met its
67 fiscal responsibility for that child for the services funded through the pool. Each agency shall continue
68 to be responsible for providing services identified in individual family service plans which are within the
69 agency's scope of responsibility and which are funded separately from the state pool.

70 E. In any matter properly before a court wherein the family assessment and planning team has
71 recommended a level of treatment and services needed by the child and family, the court shall consider
72 the recommendations of the family assessment and planning team. However, the court may make such
73 other disposition as is authorized or required by law, and services ordered pursuant to such disposition
74 shall qualify for funding as appropriated under this section.

75 § 2.1-758. Eligibility for state pool of funds.

76 A. In order to be eligible for funding for services through the state pool of funds, a youth, or family
77 with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 5 below and
78 shall be determined through the use of a uniform assessment instrument and process and by policies of
79 the community policy and management team to have access to these funds.

80 1. The child or youth has emotional or behavior problems which:

81 a. Have persisted over a significant period of time or, though only in evidence for a short period of
82 time, are of such a critical nature that intervention is warranted;

83 b. Are significantly disabling and are present in several community settings, such as at home, in
84 school or with peers; and

85 c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal
86 agency services or routine collaborative processes across agencies, or require coordinated interventions
87 by at least two agencies.

88 2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at
89 imminent risk of entering, purchased residential care. In addition, the child or youth requires services or
90 resources that are beyond normal agency services or routine collaborative processes across agencies, and
91 requires coordinated services by at least two agencies.

92 3. The child or youth requires placement for purposes of special education in approved private school
93 educational programs.

94 4. The child or youth has been placed in foster care through a parental agreement between a local
95 social services agency or public agency designated by the community policy and management team and
96 his parents or guardians, entrusted to a local social services agency by his parents or guardian or has
97 been committed to the agency by a court of competent jurisdiction for the purposes of placement as
98 authorized by § 63.1-56.

99 5. *The child or youth has been found not responsible because of mental illness or mental retardation.*

100 B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a
101 person less than eighteen years of age and (ii) any individual through twenty-one years of age who is
102 otherwise eligible for mandated services of the participating state agencies including special education
103 and foster care services.

104 Article 8.1.

105 *Child not responsible because of mental illness or mental retardation.*

106 § 16.1-277.2. *Child not responsible because of mental illness or mental retardation.*

107 A. *A child alleged by petition to have engaged in a delinquent act as defined in § 16.1-228 is not*
108 *responsible because of mental illness or mental retardation if, at the time of the act alleged, as a result*
109 *of mental illness, as defined in § 16.1-336, or mental retardation, as defined in § 37.1-1, the child did*
110 *not know the nature and consequences of the act he was doing, or, if he did know, he did not know*
111 *what he was doing was wrong. For purposes of this article, the term "mental illness" shall not include a*
112 *temporary condition of mind solely induced by voluntary intoxication or substance abuse.*

113 B. *A finding under the standard described in subsection A shall not be based solely on the child's*
114 *age or developmental maturity. Further, the existence of this standard shall not affect any "infancy"*
115 *defense that may exist based upon the age of the child at the time of the act alleged.*

116 § 16.1-277.3. *Procedures for finding child not responsible because of mental illness or mental*
117 *retardation.*

118 A. *The claim that a child accused of a delinquent act is not responsible because of mental illness or*
119 *mental retardation may be raised only by the accused child or his attorney and only by motion.*

120 B. *If, at any time before trial, the court finds, upon hearing evidence or representations of the*
121 *accused child's attorney, that there is probable cause to believe that the child's mental condition at the*

time of the offense will be a significant factor in his defense, the court shall appoint one or more qualified mental health experts to evaluate the child's mental condition at the time of the offense and, where appropriate, to assist in the development of a defense of non-responsibility because of mental illness or mental retardation. Such mental health expert shall be (i) a psychiatrist or clinical psychologist and (ii) qualified by specialized training and experience in forensic evaluation of juveniles. The Commissioner of Mental Health, Mental Retardation and Substance Abuse Services shall approve the training and qualification for individuals authorized to conduct juvenile mental condition evaluations. The Commissioner shall also provide all juvenile courts with a list of guidelines for use in the determination of qualifying individuals as experts in matters relating to mental status evaluations. The child shall not be entitled to a mental health expert of his own choosing or to funds to employ such expert.

C. The evaluation shall be performed on an outpatient basis, at a mental health facility or, if the child has been detained pursuant to this chapter, in a detention facility, unless the results of the outpatient evaluation indicate that hospitalization of the child is necessary for further evaluation of the child's mental condition at the time of the offense. If this finding is made, the court shall have the authority to order that the child be sent to a hospital or other appropriate facility designated by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for evaluation of the child. Such hospitalization shall continue for such period as the facility director deems necessary to perform an adequate evaluation, up to a maximum of thirty days.

D. The court's order for such evaluation shall require the parties to provide to the evaluator any information relevant to the evaluation, including, but not limited to, the following: (i) a copy of the petition or warrant, including any attached affidavit; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the child, and the judge appointing the evaluator; (iii) information pertaining to the alleged act, including statements made by the child to the police, probation officer or others, and transcripts of preliminary hearings, if any; (iv) a summary of the reasons for the evaluation request; (v) any available psychiatric, psychological, medical or social records that are deemed relevant; and (vi) a copy of the child's court records, including, without limitation, any matters alleging that the child was delinquent, a child in need of supervision, a child in need of services, or an abused or neglected child.

E. The evaluators shall prepare a full report concerning the child's mental condition at the time of the alleged offense, including an opinion of whether the child suffers from mental illness or has mental retardation and, if so, an opinion as to how and to what extent such condition affected the child's capacity (i) to know the nature and consequences of the act he was doing or (ii) to know that what he was doing was wrong. The report shall be prepared within the time period designated by the court, which time period may be extended by the court, upon request, if additional time is needed to obtain more information or to conduct more detailed testing.

F. The report of the evaluator shall be sent solely to the child's attorney and shall be deemed to be protected by the lawyer-client privilege. However, after the child's attorney gives notice pursuant to § 16.1-277.4 of an intent to present psychiatric or psychological evidence, the Commonwealth shall be given the report, the results of any other evaluation of the child's mental condition at the time of the alleged offense, and copies of psychiatric, psychological, medical, or other records obtained during the course of any such evaluation. No statement or disclosure made by the child during the evaluation may be used against the child at trial as evidence or as a basis for such evidence, except on the issue of the child's mental condition at the time of the offense.

§ 16.1-277.4. Notice to the Commonwealth.

If the child intends to (i) put in issue his mental condition at the time of the act charged and (ii) present testimony of an expert to support his claim on this issue at his trial, he, or his counsel, shall give notice in writing to the attorney for the Commonwealth, at least twenty-one days prior to trial, of his intention to present such evidence. In the event that such notice is not given, and, the child proffers such evidence at trial as a defense, then the court may, in its discretion, either allow the Commonwealth a continuance or, under appropriate circumstances, bar the child from presenting such evidence. The period of any such continuance shall not be counted for speedy trial purposes under § 19.2-243.

§ 16.1-277.5. Evaluation by the Commonwealth.

A. If the attorney for the child gives notice pursuant to § 16.1-277.4, and the Commonwealth thereafter seeks an evaluation of the child's mental condition at the time of the act, the court shall appoint one or more qualified mental health experts to perform such an evaluation. The court shall order the child to submit to such an evaluation and advise the child on the record in court that a refusal to cooperate with the Commonwealth's expert could result in exclusion of the child's expert evidence. The qualification of the experts and the location of the evaluation shall be governed by the provisions of § 16.1-277.3. The attorney for the Commonwealth shall be responsible for providing the experts the information specified in § 16.1-277.3 D. After performing their evaluation, the experts shall

183 report their findings and opinions, and provide copies of psychiatric, psychological, medical or other
184 records obtained during the course of the evaluation to the attorney for the Commonwealth and to the
185 child's attorney.

186 B. If the court finds, after hearing evidence presented by the parties, that the child has refused to
187 cooperate with an evaluation requested by the Commonwealth, it may admit evidence of such refusal or,
188 in the discretion of the court, bar the child from presenting expert psychiatric or psychological evidence
189 at trial on the issue of the child's mental condition at the time of the offense.

190 § 16.1-277.6. Findings.

191 A. The issue of whether the child is not responsible because of mental illness or mental retardation
192 shall be tried by the trier of fact in the adjudication hearing.

193 B. If the trier of fact finds beyond a reasonable doubt that the child committed the delinquent act
194 alleged, but also finds by a preponderance of evidence that the child is not responsible because of
195 mental illness or mental retardation, in accordance with the standard set out in § 16.1-277.2, the court
196 shall specifically find and order that the child is not guilty in regard to that act.

197 § 16.1-277.7. Disposition.

198 A. Upon finding that the child is not responsible because of mental illness or mental retardation, the
199 court shall determine whether the child poses an unreasonable risk to the safety of the community.

200 B. If the court determines that the child does pose an unreasonable risk to the community, the court
201 shall commit the child to the Commissioner of the Department of Mental Health, Mental Retardation
202 and Substance Abuse Services for placement in a secure treatment facility, including a psychiatric
203 treatment facility, if appropriate.

204 C. If the court determines that the child does not pose an unreasonable risk to the safety of the
205 community, the court shall enter a disposition authorized for children in need of services under
206 § 16.1-278.4 and § 16.1-286. In those instances where the court refers a child to the local family
207 assessment and planning team for assessment and recommendation for services, the costs of services or
208 placements subsequently ordered or authorized by the court shall be paid from the state pool of funds
209 and local pool of funds available under the Comprehensive Services Act for At-Risk Youth and Families,
210 Chapter 46 (§ 2.1-745 et seq.) of Title 2.1, unless the court determines that there is an alternative
211 source for paying such costs. The provisions of this subsection shall not be construed to preclude
212 application of the provisions of Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1.

213 D. The court shall impose the least restrictive alternative disposition.

214 E. Any disposition entered by the court under this section shall automatically expire when the child
215 becomes twenty-one years of age.

216 § 16.1-277.8. Review.

217 A. At the time the court orders a disposition under § 16.1-277.7, the court shall schedule another
218 hearing in 120 days. The court shall also order all relevant parties to appear at that time and shall
219 order the agency assuming responsibility for the child to submit the report required by this section. This
220 process shall be repeated at 120-day intervals so long as the child remains within the jurisdiction of the
221 courts.

222 B. The agency that has assumed responsibility for the child shall submit to the court a report
223 concerning the child's current state of mental health fourteen days prior to the scheduled hearing.

224 C. If the child has been found to present an unreasonable risk to the safety of the community
225 pursuant to § 16.1-277.7, the report shall include an opinion whether the child continues to present an
226 unreasonable risk.

227 D. At any time, the agency that has assumed responsibility for the child or the child's attorney may
228 petition the court for a change of disposition. If the agency is the petitioner, it shall include with the
229 petition a report containing the material required by this section.

230 E. Copies of the required reports shall be sent to the child's attorney, the attorney for the
231 Commonwealth in the jurisdiction of the original proceeding, and the community services board in the
232 same jurisdiction.

233 F. At the scheduled time or upon receipt of a petition, the court shall hold a hearing to determine if
234 the disposition originally ordered under § 16.1-277.7 should be continued or changed.

235 G. After the hearing, the court may make any disposition set out in § 16.1-277.7, subject to the
236 requirement of § 16.1-277.7 D, or may release the child.

237 H. The procedures for disposition or change in disposition set out in this section are exclusive and
238 take precedence over any other procedures set out in the Code.

239 § 16.1-277.9. Compensation of experts.

240 Experts appointed pursuant to this article shall be compensated as provided in § 19.2-175.