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HOUSE BILL NO. 669

Offered January 20, 2000

A BILL to amend and reenact §§ 16.1-278.8 and 16.1-284.1 of the Code of Virginia, relating to postdispositional detention.

Patrons—McDonnell, Cantor, Darner, Hamilton, Jackson and Jones, J.C.; Senators: Forbes, Howell and Quayle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.8 and 16.1-284.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.8. Delinquent juveniles.

A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278;

2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;

3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile and his parent;

4. Defer disposition for a period of time not to exceed twelve months, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the juvenile (i) is otherwise eligible for commitment to the Department, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;

5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a period not to exceed twelve months and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile where the court determines this participation to be in the best interest of the juvenile and other parties concerned and where the court determines it reasonable to expect the parent to be able to comply with such order;

7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

7a. Order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed thirty calendar days from the date the order is entered, inclusive of time served in a detention home or other secure facility, for a single offense or multiple offenses, if a juvenile is found to have committed an offense which if committed by an adult would be punishable by confinement in a state or local correctional facility as defined in § 53.1-1, and the court determines that (i) the juvenile has not previously been found guilty of a delinquent act within the preceding twelve months; (ii) the juvenile has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony; (iii) the interests of the juvenile and the community require that the juvenile be placed under legal restraint or discipline; and (iv) other placements authorized by this title will not serve the best interests of the juvenile, then the court may;

8. Impose a fine not to exceed \$500 upon such juvenile;

9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile

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60 as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is
61 suspended may be referred for an assessment and subsequent referral to appropriate services, upon such
62 terms and conditions as the court may order. The court, in its discretion and upon a demonstration of
63 hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who
64 enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to
65 and from school. The restricted permit shall be issued in accordance with the provisions of such
66 subsection. However, only an abstract of the court order which identifies the juvenile and the conditions
67 under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

68 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the
69 physical custody of the court during any period of curfew restriction. The court shall send an abstract of
70 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall
71 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this
72 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement
73 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be
74 noted all curfew restrictions, shall be provided to the juvenile and shall contain such information
75 regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor
76 vehicle under the court order in accordance with its terms.

77 Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this
78 section shall be guilty of a violation of § 46.2-301.

79 The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a
80 driver's license until such time as is stipulated in the court order or until notification by the court of
81 withdrawal of the order imposing the curfew;

82 10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual
83 damages or loss caused by the offense for which the juvenile was found to be delinquent;

84 11. Require the juvenile to participate in a public service project under such conditions as the court
85 prescribes;

86 12. In case of traffic violations, impose only those penalties which are authorized to be imposed on
87 adults for such violations. However, for those violations punishable by confinement if committed by an
88 adult, confinement shall be imposed only as authorized by this title;

89 13. Transfer legal custody to any of the following:

90 a. A relative or other individual who, after study, is found by the court to be qualified to receive and
91 care for the juvenile;

92 b. A child welfare agency, private organization or facility which is licensed or otherwise authorized
93 by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a
94 delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the
95 approval of the Director; or

96 c. The local board of social services of the county or city in which the court has jurisdiction or, at
97 the discretion of the court, to the local board of the county or city in which the juvenile has residence if
98 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for
99 care and custody, provided that it has been given reasonable notice of the pendency of the case and an
100 opportunity to be heard. However, in an emergency in the county or city in which the court has
101 jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed
102 fourteen days without prior notice or an opportunity to be heard if the judge entering the placement
103 order describes the emergency and the need for such temporary placement in the order. Nothing in this
104 subdivision shall prohibit the commitment of a juvenile to any local board of social services in the
105 Commonwealth when such local board consents to the commitment. The board to which the juvenile is
106 committed shall have the final authority to determine the appropriate placement for the juvenile. Any
107 order authorizing removal from the home and transferring legal custody of a juvenile to a local board of
108 social services as provided in this subdivision shall be entered only upon a finding by the court that
109 reasonable efforts have been made to prevent removal and that continued placement in the home would
110 be contrary to the welfare of the juvenile, and the order shall so state;

111 14. Commit the juvenile to the Department of Juvenile Justice, but only if he is older than ten years
112 of age and the current offense is (i) an offense which would be a felony if committed by an adult or (ii)
113 an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has
114 previously been found to be delinquent based on an offense which would be either a felony or Class 1
115 misdemeanor if committed by an adult;

116 15. Impose the penalty authorized by § 16.1-284;

117 16. Impose the penalty authorized by § 16.1-284.1;

118 17. Impose the penalty authorized by § 16.1-285.1;

119 18. Impose the penalty authorized by § 16.1-278.9; or

120 19. Require the juvenile to participate in a gang-activity prevention program including, but not
121 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to

§ 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.1, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, or any violation of a local ordinance adopted pursuant to § 18.2-138.1.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.1, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147; or for any violation of a local ordinance adopted pursuant to § 18.2-138.1. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

§ 16.1-284.1. Placement in secure local facility.

A. If a juvenile fourteen years of age or older is found to have committed an offense which if committed by an adult would be punishable by confinement in a state or local correctional facility as defined in § 53.1-1, and the court determines (i) that the juvenile has not previously been found guilty of a delinquent act within the preceding twelve months; (ii) that the interests of the juvenile and the community require that the juvenile be placed under legal restraint or discipline, and (iii) that other placements authorized by this title will not serve the best interests of the juvenile, then the court may order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed thirty calendar days from the date the order is entered, inclusive of time served in a detention home or other secure facility, for a single offense or multiple offenses.

B. If a juvenile fourteen years of age or older is found to have committed an offense which if committed by an adult would be punishable by confinement in a state or local correctional facility as defined in § 53.1-1, and the court determines (i) after receipt of a social history compiled within the immediately preceding twelve months pursuant to § 16.1-273, that the juvenile has been adjudged a delinquent within the immediately preceding twelve months and *has there is documentation that the juvenile failed to respond to past treatment efforts;* (ii) *that the juvenile is amenable to continued treatment efforts in the community;* and (iii) *the interests of the community and the juvenile require that the juvenile be placed under legal restraint or discipline, based on the nature of the present offense, the nature of the juvenile's prior delinquency record, and the nature of the past treatment efforts otherwise eligible for commitment to the Department;* (iii) *that the juvenile has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony;* (iv) *that the juvenile has not previously been committed to and received by the Department;* (v) *that the juvenile has had an assessment completed by the secure detention home to which he will be sentenced;* and (vi) *that the juvenile has been determined to be an appropriate candidate for placement by the facility,* then the court may order the juvenile committed to the Department, but suspend such commitment and order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed six months; *inclusive of time served in detention while awaiting disposition;* for a single offense or for multiple offenses. In suspending the commitment to the Department as provided for in this subsection, the court shall specify conditions for the juvenile's participation in one or more community treatment programs as may be appropriate for the juvenile's rehabilitation.

~~C.~~ During any period of confinement ordered pursuant to this section, the court shall conduct a mandatory review hearing at least once during each thirty days of the period of confinement and at such other times upon the request of the juvenile's probation officer, for good cause shown. If it appears at such hearing that the purpose of the order of confinement has been achieved, the juvenile shall be released on probation for such period and under such conditions as the court may specify and remain subject to the order suspending commitment to the State Department of Juvenile Justice. If the court determines at the first or any subsequent review hearing that the juvenile is consistently failing to comply with the conditions specified by the court or the policies and program requirements of the facility, then the court shall order that the juvenile ~~either be (i) released under such conditions as the court may specify subject to the suspended commitment or (ii) committed to the State Department of Juvenile Justice pursuant to § 16.1-291.~~ If the court determines at the first or any subsequent review hearing that the juvenile is not actively involved in any community treatment program through no fault of his own, then the court shall order that the juvenile be released under such conditions as the court may specify subject to the suspended commitment.

~~D.~~ A juvenile may only be ordered confined pursuant to this section to a facility in compliance with standards established by the State Board for such placements. Standards for these facilities shall have regard for reasonable utilization of these facilities and the requirements of § 16.1-309.4 *require that juveniles placed pursuant to this section be housed separate and apart from securely confined juveniles and be provided services,* consistent with the intent of this section.

~~E.~~ The Department of Juvenile Justice shall assist the localities or combinations thereof in

183 implementing this section consistent with the statewide plan required by § 16.1-309.4 and pursuant to
184 standards promulgated by the State Board, in order to ensure the availability and reasonable access of
185 each court to the facilities the use of which is authorized by this section.