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SENATE BILL NO. 344

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 5, 2000)

(Patron Prior to Substitute—Senator Forbes)

A BILL to amend and reenact §§ 16.1-278.7, 16.1-278.8 and 16.1-285 of the Code of Virginia, relating to commitment to the Department of Juvenile Justice; transfer of juveniles convicted as adults to Department of Corrections.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.7, 16.1-278.8 and 16.1-285 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.7. Commitment to Department of Juvenile Justice.

~~Unless a~~ Only a juvenile who is adjudicated as a delinquent and is older than ten years of age may be committed to the Department of Juvenile Justice. No child found to be abused, neglected, in need of services, in need of supervision or a status offender is also found to be delinquent and is older than ten years of age, he shall not be committed to the Department of Juvenile Justice based solely on those findings. No juvenile court or circuit court shall order the commitment of any child jointly to the Department of Juvenile Justice and to a local board of public welfare or social services or transfer the custody of a child jointly to a court service unit of a juvenile court and to a local board of public welfare or social services. Any person sentenced and committed to an active term of incarceration in the Department of Corrections who is, at the time of such sentencing, in the custody of the Department of Juvenile Justice, upon pronouncement of sentence, shall be immediately transferred to the Department of Corrections.

§ 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 or is guilty of an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense which would be either a felony or a Class 1 misdemeanor if committed by an adult, (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;

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

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

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

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

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

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

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

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

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

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

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

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

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

114 14. Commit the juvenile to the Department of Juvenile Justice, but only if he is older than ten years
115 of age and the current offense is (i) an offense which would be a felony if committed by an adult or (ii)
116 an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has
117 previously been found to be delinquent based on an offense which would be ~~either a felony or Class 4~~
118 ~~misdemeanor~~ *a Class 1, 2 or 3 felony or an unclassified felony*, if committed by an adult ;

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

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

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

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

123 19. Require the juvenile to participate in a gang-activity prevention program including, but not
124 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to
125 § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations:
126 §§ 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,
127 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
128 adopted pursuant to § 18.2-138.1.

129 B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the
130 juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the
131 offense, or for actual medical expenses incurred by the victim as a result of the offense: §§ 18.2-51,
132 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,
133 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
134 pursuant to § 18.2-138.1. The court shall further require the juvenile to participate in a community
135 service project under such conditions as the court prescribes.

136 § 16.1-285. Duration of commitments.

137 Except as provided in § 16.1-285.1, all commitments under this chapter shall be for an indeterminate
138 period having regard to the welfare of the juvenile and interests of the public, but no juvenile committed
139 hereunder shall be held or detained longer than thirty-six continuous months or after such juvenile has
140 attained the age of twenty-one years. However, the thirty-six month limitation shall not apply in cases of
141 commitment for an act of murder or manslaughter. ~~Any juvenile who is committed under this law as an~~
142 ~~abused or neglected child or a child in need of services shall have the right upon request to be released~~
143 ~~from such commitment at the age of eighteen years.~~ The Department shall have the authority to
144 discharge any juvenile from its custody in accordance with policies and procedures established by the
145 State Board and with other provisions of law.

146 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
147 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
148 **is \$0 in FY 2010.**