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SENATE BILL NO. 66

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 25, 2000)

(Patron Prior to Substitute—Senator Mims)

*A BILL to amend and reenact §§ 16.1-278.8 and 16.1-284.1 and 16.1-292 of the Code of Virginia, relating to postdispositional detention.***Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-278.8, 16.1-284.1 and 16.1-292 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~~, *has been found delinquent for an offense which would be a Class 1 misdemeanor or felony 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;

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

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

If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the physical custody of the court during any period of curfew restriction. The court shall send an abstract of any order issued under the provisions of this section to the Department of Motor Vehicles, which shall

60 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this
61 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement
62 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be
63 noted all curfew restrictions, shall be provided to the juvenile and shall contain such information
64 regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor
65 vehicle under the court order in accordance with its terms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

109 19. Require the juvenile to participate in a gang-activity prevention program including, but not
110 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to
111 § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations:
112 §§ 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,
113 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
114 adopted pursuant to § 18.2-138.1.

115 B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the
116 juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the
117 offense, or for actual medical expenses incurred by the victim as a result of the offense: §§ 18.2-51,
118 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,
119 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
120 pursuant to § 18.2-138.1. The court shall further require the juvenile to participate in a community
121 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 and is not currently adjudicated delinquent or found guilty of a violent juvenile felony~~, (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~~ *thirty calendar days* ~~six months~~ 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 *The period of confinement ordered may exceed thirty calendar days if* (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 failed to respond to past treatment efforts;*; that the juvenile is *amenable to continued treatment efforts in the community; and the juvenile has had an assessment completed by the secure facility to which he is ordered concerning the appropriateness of the placement.* (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

B. If the period of confinement in a detention home or other secure facility for juveniles is to exceed thirty calendar days, then the court may order the juvenile committed to the Department, *if he is eligible pursuant to subdivision A 14 of § 16.1-278.8*, 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~~ *satisfactory completion of in* one or more community or facility based treatment programs as may be appropriate for the juvenile's rehabilitation.

C. During any period of confinement *which exceeds thirty calendar days* 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 juvenile's commitment to the Department has been suspended, as provided in subsection B of this section, and 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 facility based 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 juveniles placed pursuant to this section for a period which exceeds thirty calendar days be provided separate services for their rehabilitation*, consistent with the intent of this section.

E. The Department of Juvenile Justice shall assist the localities or combinations thereof in implementing this section consistent with the statewide plan required by § 16.1-309.4 and pursuant to standards promulgated by the State Board, in order to ensure the availability and reasonable access of each court to the facilities the use of which is authorized by this section.

§ 16.1-292. Violation of court order by any person.

A. Any person violating an order of the juvenile court entered pursuant to §§ 16.1-278.2 through 16.1-278.19, including a parent subject to an order issued pursuant to subdivision 3 of § 16.1-278.8, may be proceeded against (i) by an order requiring the person to show cause why the order of the court entered pursuant to §§ 16.1-278.2 through 16.1-278.19 has not been complied with, (ii) for contempt of court pursuant to § 16.1-69.24 or as otherwise provided in this section, or (iii) by both. Except as otherwise expressly provided herein, nothing in this chapter shall deprive the court of its power to

183 punish summarily for contempt for such acts as set forth in § 18.2-456, or to punish for contempt after
184 notice and an opportunity for a hearing on the contempt except that confinement in the case of a
185 juvenile *may only be imposed if the original charge would warrant confinement under the provisions of*
186 *subdivision A 1 of § 16.1-248.1. The confinement* shall be in a secure facility for juveniles rather than in
187 jail and shall not exceed a period of ten days for each offense. However, if the person violating the
188 order was a juvenile at the time of the original act and is eighteen years of age or older when the court
189 enters a disposition for violation of the order, the judge may order confinement ~~(i) in jail, or (ii) in a~~
190 ~~secure facility for juveniles provided the judge finds from the evidence that the presence of the person~~
191 ~~in such a facility is consistent with assuring the safety of the children confined in the facility and the~~
192 ~~staff of the facility and the finding is in writing and included in the order.~~

193 B. Upon conviction of any party for contempt of court in failing or refusing to comply with an order
194 of a juvenile court for spousal support or child support under § 16.1-278.15, the court may commit and
195 sentence such party to confinement in a jail, workhouse, city farm or work squad as provided in
196 §§ 20-61 and 20-62, for a fixed or indeterminate period or until the further order of the court. In no
197 event, however, shall such sentence be imposed for a period of more than twelve months. The sum or
198 sums as provided for in § 20-63 shall be paid as therein set forth, to be used for the support and
199 maintenance of the spouse or the child or children for whose benefit such order or decree provided.

200 C. Notwithstanding the contempt power of the court, the court shall be limited in the actions it may
201 take with respect to a child violating the terms and conditions of an order to those which the court
202 could have taken at the time of the court's original disposition pursuant to §§ 16.1-278.2 through
203 16.1-278.10, except as hereinafter provided. However, this limitation shall not be construed to deprive
204 the court of its power to (i) punish a child summarily for contempt for acts set forth in § 18.2-456, or
205 (ii) punish a child for contempt for violation of a dispositional order in a delinquency proceeding after
206 notice and an opportunity for a hearing regarding such contempt, including acts of disobedience of the
207 court's dispositional order which are committed outside the presence of the court.

208 D. In the event a child in need of services is found to have willfully and materially violated for a
209 second or subsequent time the order of the court pursuant to § 16.1-278.4, the dispositional alternatives
210 specified in subdivision 9 of § 16.1-278.8 shall be available to the court.

211 E. In the event a child in need of supervision is found to have willfully and materially violated an
212 order of the court pursuant to § 16.1-278.5, the court may enter any of the following orders of
213 disposition:

214 1. Suspend the child's motor vehicle driver's license;

215 2. Order any such child fourteen years of age or older to be (i) placed in a foster home, group home
216 or other nonsecure residential facility, or, (ii) if the court finds that such placement is not likely to meet
217 the child's needs, that all other treatment options in the community have been exhausted, and that secure
218 placement is necessary in order to meet the child's service needs, detained in a secure facility for a
219 period of time not to exceed ten consecutive days for violation of any order of the court arising out of
220 the same petition. The court shall state in its order for detention the basis for all findings required by
221 this section. When any child is detained in a secure facility pursuant to this section, the court shall
222 direct the agency evaluating the child pursuant to § 16.1-278.5 to reconvene the interdisciplinary team
223 participating in such evaluation as promptly as possible to review its evaluation, develop further
224 treatment plans as may be appropriate and submit its report to the court for its determination as to
225 further treatment efforts either during or following the period the child is in secure detention. A juvenile
226 may only be detained pursuant to this section in a detention home or other secure facility in compliance
227 with standards established by the State Board. Any order issued pursuant to this subsection is a final
228 order and is appealable to the circuit court as provided by law.

229 F. Nothing in this section shall be construed to reclassify a child in need of services or in need of
230 supervision as a delinquent.

231 **2. The Department of Juvenile Justice shall establish guidelines for use by their Court Service**
232 **Unit personnel when making recommendations to the court regarding the secure detention of**
233 **juveniles.**