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HOUSE BILL NO. 1753

Offered January 10, 2001

Prefiled December 20, 2000

A BILL to amend and reenact §§ 16.1-284.1, as it may become effective, and 16.1-292 of the Code of Virginia, relating to postdispositional detention.

Patrons—McDonnell, Hamilton and Tata; Senator: Rerras

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-284.1, as it may become effective, and 16.1-292 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-284.1. (Effective July 1, 2002) 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 and is not currently adjudicated delinquent *of a violent juvenile felony* or found guilty of a violent juvenile felony, (ii) *that the juvenile has not been released from the custody of the Department within the previous eighteen months*, (iii) that the interests of the juvenile and the community require that the juvenile be placed under legal restraint or discipline, and ~~(iii)~~ (iv) 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 six months from the date the order is entered, for a single offense or multiple offenses.

The period of confinement ordered may exceed thirty calendar days if the juvenile has had an assessment completed by the secure facility to which he is ordered concerning the appropriateness of the placement.

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~~ *shall* 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. In suspending the commitment to the Department as provided for in this subsection, the court shall specify conditions for the juvenile's satisfactory completion of 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 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 be committed to the State Department of Juvenile Justice. 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 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

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59 entered pursuant to §§ 16.1-278.2 through 16.1-278.19 has not been complied with, (ii) for contempt of
60 court pursuant to § 16.1-69.24 or as otherwise provided in this section, or (iii) by both. Except as
61 otherwise expressly provided herein, nothing in this chapter shall deprive the court of its power to
62 punish summarily for contempt for such acts as set forth in § 18.2-456, or to punish for contempt after
63 notice and an opportunity for a hearing on the contempt ~~except that confinement in~~ . In the case of a
64 juvenile, *confinement* shall be in a secure facility for juveniles rather than in jail and shall not exceed a
65 ~~period total~~ of ten days for ~~each offense all violations of each order~~. However, if the person violating
66 the order was a juvenile at the time of the original act and is eighteen years of age or older when the
67 court enters a disposition for violation of the order, the judge may order confinement in jail.

68 B. Upon conviction of any party for contempt of court in failing or refusing to comply with an order
69 of a juvenile court for spousal support or child support under § 16.1-278.15, the court may commit and
70 sentence such party to confinement in a jail, workhouse, city farm or work squad as provided in
71 §§ 20-61 and 20-62, for a fixed or indeterminate period or until the further order of the court. In no
72 event, however, shall such sentence be imposed for a period of more than twelve months. The sum or
73 sums as provided for in § 20-63 shall be paid as therein set forth, to be used for the support and
74 maintenance of the spouse or the child or children for whose benefit such order or decree provided.

75 C. Notwithstanding the contempt power of the court, the court shall be limited in the actions it may
76 take with respect to a child violating the terms and conditions of an order to those which the court
77 could have taken at the time of the court's original disposition pursuant to §§ 16.1-278.2 through
78 16.1-278.10, except as hereinafter provided. However, this limitation shall not be construed to deprive
79 the court of its power to (i) punish a child summarily for contempt for acts set forth in § 18.2-456 or
80 (ii) punish a child for contempt for violation of a dispositional order in a delinquency proceeding after
81 notice and an opportunity for a hearing regarding such contempt, including acts of disobedience of the
82 court's dispositional order which are committed outside the presence of the court.

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

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

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

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

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