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HOUSE BILL NO. 2795

Offered January 19, 2001

A BILL to amend and reenact § 16.1-285.1 of the Code of Virginia, relating to commitment of serious juvenile offenders.

Patrons—McDonnell and Albo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-285.1 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-285.1. Commitment of serious offenders.

A. In the case of a juvenile fourteen years of age or older who has been found guilty of an offense which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months, (iii) the felony offense is punishable by a term of confinement of greater than twenty years if the felony was committed by an adult, or (iv) the juvenile has been previously adjudicated delinquent for an offense which if committed by an adult would be a felony punishable by a term of confinement of twenty years or more, and the circuit court, or the juvenile or family court, as the case may be, finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, then the court may order the juvenile committed to the Department of Juvenile Justice for placement in a juvenile correctional center for the period of time prescribed pursuant to this section.

Alternatively, in order to determine if a juvenile, transferred from a juvenile and domestic relations district court to a circuit court pursuant to § 16.1-269.1, appropriately qualifies for commitment pursuant to this section, notwithstanding the inapplicability of the qualification criteria set forth in items clauses (i) through (iv), the circuit court may consider the commitment criteria set forth in subdivisions 1., 2. and 3. of subsection B as well as other components of the juvenile's life history and, if upon such consideration in the opinion of the court the needs of the juvenile and the interests of the community would clearly best be served by commitment hereunder, may so commit the juvenile.

B. Prior to committing any juvenile pursuant to this section, the court shall consider:

1. The juvenile's age;

2. The seriousness and number of the present offenses, including (i) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the offense was against persons or property, with greater weight being given to offenses against persons, especially if death or injury resulted; (iii) whether the offense involved the use of a firearm or other dangerous weapon by brandishing, displaying, threatening with or otherwise employing such weapon; and (iv) the nature of the juvenile's participation in the alleged offense;

3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the number and nature of previous contacts with courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated offenses; and

4. The Department's estimated length of stay.

Such commitment order must be supported by a determination that the interests of the juvenile and community require that the juvenile be placed under legal restraint or discipline and that the juvenile is not a proper person to receive treatment or rehabilitation through other juvenile programs or facilities.

C. In ordering commitment pursuant to this section, the court shall specify a period of commitment not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first. The court may also order a period of determinate or indeterminate parole supervision to follow the commitment but the total period of commitment and parole supervision shall not exceed seven years or the juvenile's twenty-first birthday, whichever occurs first.

D. Upon receipt of a juvenile committed under the provisions of this section, the Department shall evaluate the juvenile for the purpose of considering placement of the juvenile in an appropriate juvenile correctional center for the time prescribed by the committing court. Such a placement decision shall be made based on the availability of treatment programs at the facility; the level of security at the facility; the offense for which the juvenile has been committed; and the welfare, age and gender of the juvenile.

59 E. The court which commits the juvenile to the Department under this section shall have continuing
60 jurisdiction over the juvenile throughout his commitment. The continuing jurisdiction of the court shall
61 not prevent the Department from removing the juvenile from a juvenile correctional center without prior
62 court approval for the sole purposes of routine or emergency medical treatment, routine educational
63 services, or family emergencies.

64 F. Any juvenile committed under the provisions of this section shall not be released at a time earlier
65 than that specified by the court in its dispositional order except as provided for in § 16.1-285.2. The
66 Department may petition the committing court for a hearing as provided for in § 16.1-285.2 for an
67 earlier release of the juvenile when good cause exists for an earlier release. In addition, the Department
68 shall petition the committing court for a determination as to the continued commitment of each juvenile
69 sentenced under this section at least sixty days prior to the second anniversary of the juvenile's date of
70 commitment and sixty days prior to each annual anniversary thereafter.

71 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
72 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
73 **cannot be determined.**