

2001 RECONVENED SESSION

REENROLLED

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-233 through 16.1-237, 16.1-285, 16.1-291, 16.1-293, and 63.1-248.3 of the Code of Virginia, relating to duties of court services units and local departments of social services; parole supervision of juveniles; secure residential facilities; authority of the juvenile court over adults; penalty.

[S 1296]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-233 through 16.1-237, 16.1-285, 16.1-291, 16.1-293, and 63.1-248.3 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-233. Department to develop court services; court services units; appointment and removal of employees; salaries.

A. Within funds appropriated for the purpose, it shall be a function of the Department to develop and operate, except as hereinafter provided, probation, *parole* and other court services for juvenile and domestic relations district courts in order that all children coming within the jurisdiction of such courts throughout the Commonwealth shall receive the fullest protection of the court. To this end the Director is empowered to establish court services units in his department. The Director shall appoint such employees as he may find to be necessary to carry out properly the responsibilities of the Department relative to the development, supervision and operation of probation, *parole* and other court services throughout the Commonwealth as set forth in this chapter.

B. The salaries of the persons employed pursuant to this section shall be paid out of funds appropriated for such purpose to the Department of Juvenile Justice. The Director and such employees as he may find necessary to carry out properly the responsibilities of the Department pursuant to subsection A of this section shall have access to all probation offices, other social services and to their records.

C. The State Board shall establish minimum standards for court service staffs and related supportive personnel and promulgate regulations pertaining to their appointment and function to the end that uniform services, insofar as is practical, will be available to juvenile and domestic relations district courts throughout the Commonwealth. In counties or cities now served by regional juvenile and domestic relations courts or where specialized court service units are not provided, and in any county or city which provided specialized services on June 30, 1973, that requests the development of a court service unit, appointment to positions in such units shall be based on merit as provided in Chapter 10 (§ 2.1-110 et seq.) of Title 2.1.

D. No person shall be assigned to or discharged from the state-operated court service staff of a juvenile and domestic relations district court except as provided in Chapter 10 of Title 2.1, nor without the prior mutual approval of the judge thereof and the Director. However, the chief judge of any such court shall be empowered, for good cause, after due notice and opportunity to be heard, to order the transfer of any person from the court service staff of his court, and the Director shall likewise be empowered to order such transfer or separation subject only to the limitations of Chapter 10 of Title 2.1.

§ 16.1-234. Duties of Department; provision of quarters, utilities, and office equipment to court service unit.

The Director shall cause the Department to study the conditions existing in the several cities and counties, to confer with the judges of the juvenile and domestic relations district courts, the ~~superintendents~~ *directors* and boards of ~~public welfare~~ *social services*, and other appropriate officials, as the case may be, and to plan, establish and operate unless otherwise provided an adequate and coordinated program of probation, *parole* and related services to all juvenile and domestic relations district courts in counties or cities heretofore served by regional juvenile and domestic relations courts, and where specialized probation, *parole* and related court services ~~are were not being~~ provided as of July 1, 1973, and to counties and cities ~~which~~ *that* request a development of a court service unit with the approval of the governing bodies after consultation with the chief juvenile and domestic relations district court judge.

In each county and city in which there is located an office for a state juvenile and domestic relations district court service unit such jurisdiction shall provide suitable quarters and utilities, including telephone service, for such court service unit staff. Such county or city shall also provide all necessary furniture and furnishings for the efficient operation of the unit. When such court service unit serves counties or cities in addition to the county or city where the office is located, the jurisdiction or

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jurisdictions so served shall share proportionately, based on the population of the jurisdictions, in the cost of the quarters and utilities, including telephone service and necessary furniture and furnishings. All other office equipment and supplies, including postage, shall be furnished by the Commonwealth and shall be paid out of the appropriation for criminal charges.

In counties and cities ~~providing that provided~~ specialized court service programs prior to July 1, 1973, which do not request the development of a state-operated court service unit, it shall be the duty of the Department to insure that minimum standards established by the State Board are adhered to, to confer with the judges of the juvenile and domestic relations district court and other appropriate officials as the case may be, and to assist in the continued development and extension of an adequate and coordinated program of court services, probation, *parole* and detention facilities and other specialized services and facilities to such juvenile and domestic relations district courts.

§ 16.1-235. How probation, parole and related court services provided.

Probation, *parole* and related court services shall be provided through the following means:

A. State court service units. - The Department shall develop and operate probation, *parole* and related court services in counties or cities heretofore served by regional juvenile and domestic relations district courts and where specialized probation, *parole* and related court services ~~are were not being~~ provided as of July 1, 1973, and make such services available to juvenile and domestic relations district courts, as required by this chapter and by regulations established by the Board. All other counties or cities may request the development of a state-operated court service unit with the approval of their governing bodies after consultation with the chief judge of the juvenile and domestic relations district court of such jurisdiction. In counties or cities now served by regional juvenile and domestic relations district courts and where specialized probation, *parole* and related court services ~~are were not being~~ provided as of July 1, 1973, the judge or judges of the juvenile and domestic relations district court may from a list of eligibles certified by the Director appoint one or more suitable persons as probation *and parole* officers and related court service personnel in accordance with established qualifications and regulations.

B. Local units. - In counties and cities providing specialized court services as of July 1, 1973, who do not request the development of a state-operated court service unit, the chief judge or judges of the juvenile and domestic relations district court may, from a list of eligibles certified by the Director or by the governing body or bodies of the district appoint one or more suitable persons as probation *and parole* officers and related court service personnel in accordance with established qualifications and regulations and shall develop and operate probation, *parole*, detention and related court services.

§ 16.1-236. Supervisory officers.

In any court where more than one probation *or parole* officer or other court services staff has been appointed under the provisions of this law, one or more probation *or parole* officers may be designated to serve in a supervisory position by the chief judge of the juvenile and domestic relations district court.

The transfer or demotion of supervisory officers of state court service units shall be made only for good cause shown, in accordance with Chapter 10 (§ 2.1-110 et seq.) of Title 2.1. The transfer or demotion of supervisory officers of local court service units shall be made only for good cause shown, after due notice and opportunity to be heard.

§ 16.1-237. Powers, duties and functions of probation and parole officers.

In addition to any other powers and duties imposed by this law, a probation *or parole* officer appointed hereunder shall:

A. Investigate all cases referred to him by the judge or any person designated so to do, and shall render reports of such investigation as required;

B. Supervise ~~such persons as are~~ placed under his supervision and shall keep informed concerning the conduct and condition of every person under his supervision by visiting, requiring reports and in other ways, and shall report thereon as required;

C. Under the general supervision of the director of the court service unit, investigate complaints and accept for informal supervision cases wherein such handling would best serve the interests of all concerned;

D. Use all suitable methods not inconsistent with conditions imposed by the court to aid and encourage persons on probation *or parole* and to bring about improvement in their conduct and condition;

E. Furnish to each person placed on probation *or parole* a written statement of the conditions of his probation *or parole* and instruct him regarding the same;

F. Keep records of his work and perform such other duties as the judge or other person designated by ~~him~~ the judge or the Director shall require;

G. Have the authority to administer oaths and take acknowledgements for the purposes of §§ 16.1-259 and 16.1-260 to facilitate the processes of intake and petition; and

H. Have the powers of arrest of a police officer and the power to carry a concealed weapon when

specifically so authorized by the judge.

§ 16.1-285. Duration of commitments.

Except as provided in § 16.1-285.1, all commitments under this chapter shall be for an indeterminate period having regard to the welfare of the juvenile and interests of the public, but no juvenile committed hereunder shall be held or detained longer than thirty-six continuous months or after such juvenile has attained the age of twenty-one years. However, the thirty-six month limitation shall not apply in cases of commitment for an act of murder or manslaughter. The Department shall have the authority to discharge any juvenile or person from its custody, including releasing a juvenile or person to parole supervision, in accordance with policies and procedures established by the State Board and with other provisions of law. Parole supervision programs shall be operated through the court services units established pursuant to § 16.1-233. A juvenile or person who violates the conditions of his parole granted pursuant to this section may be proceeded against for a revocation or modification of parole status pursuant to § 16.1-291.

§ 16.1-291. Revocation or modification of probation, protective supervision or parole; proceedings; disposition.

A. A ~~child~~ juvenile or person who violates an order of the juvenile court entered into pursuant to §§ 16.1-278.2 through 16.1-278.10, who violates the conditions of his probation granted pursuant to § 16.1-278.5 or § 16.1-278.8, or who violates the conditions of his ~~or her~~ parole granted pursuant to §§ 16.1-285, 16.1-285.1 or § 16.1-293, may be proceeded against for a revocation or modification of such order or parole status. A proceeding to revoke or modify probation, protective supervision or parole shall be commenced by the filing of a petition. Except as otherwise provided, such petitions shall be screened, reviewed and prepared in the same manner and shall contain the same information as provided in §§ 16.1-260 and 16.1-262. The petition shall recite the date that the ~~child~~ juvenile or person was placed on probation, under protective supervision or on parole and shall state the time and manner in which notice of the terms of probation, protective supervision or parole were given. ~~Proceedings to revoke or modify probation, protective supervision or parole shall be governed by the procedures, safeguards, rights and duties applicable to the original proceedings.~~

B. If a ~~child~~ juvenile or person is found to have violated a prior order of the court or the terms of probation or parole, the court may, in accordance with the provisions of §§ 16.1-278.2 through 16.1-278.10, upon a revocation or modification hearing, modify or extend the terms of the order of probation or parole, including termination of probation or parole; ~~or make any other disposition of the child.~~ However, notwithstanding the contempt power of the court as provided in § 16.1-292, the court shall be limited in the actions it may take to those that the court may have taken at the time of the court's original disposition pursuant to §§ 16.1-278.2 through 16.1-278.10, except as hereinafter provided.

C. In the event that a child in need of supervision is found to have willfully and materially violated an order of the court or the terms of his probation granted pursuant to § 16.1-278.5, in addition to or in lieu of the dispositions specified in that section, the court may enter any of the following orders of disposition:

1. Suspend the child's driver's license upon terms and conditions which may include the issuance of a restricted license for those purposes set forth in subsection E of § 18.2-271.1; or

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

D. Nothing in this section shall be construed to reclassify a child in need of supervision as a delinquent.

E. If a person adjudicated delinquent and found to have violated an order of the court or the terms of his probation or parole was a juvenile at the time of the original offense and is eighteen years of age or older when the court enters disposition for violation of the order of the court or the terms of his probation or parole, the dispositional alternative specified in § 16.1-284 shall be available to the court.

§ 16.1-293. Supervision of juvenile or person during commitment and on parole; placing juvenile or person in halfway house.

At such time as the court commits a juvenile to the Department, it shall determine whether the juvenile and domestic relations district court service unit or the local department of public welfare or social services shall maintain contact with the juvenile during the juvenile's commitment. Except in exceptional cases, the court shall designate the local department to maintain contact with the juvenile during commitment only when the juvenile was in the custody of the local department immediately prior to his commitment to the Department. The Department shall return a juvenile to the previously designated local supervising agency and shall consult with the local supervising agency two weeks prior to such release on parole supervision concerning return of the juvenile to the local agency, unless there is an agreement for an earlier release. However, when any juvenile is committed to the Department by a circuit court, the juvenile may, upon request of the judge, be returned to the committing court by the Department.

The local supervising agency. If a juvenile or person is placed on parole supervision following that juvenile's or person's release from commitment to the Department, the court services unit providing parole supervision shall furnish the juvenile or person a written statement of the conditions of his parole and shall instruct him regarding the same. The conditions of the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by the court pursuant to § 16.1-291. If the parole supervision is for an indeterminate period of time, the director of the supervising agency court services unit may approve termination of parole supervision.

The Department shall notify the school division superintendent in the locality where the juvenile was enrolled of his commitment to a facility. The court services unit or local department of public welfare or social services shall, in consultation with the Department of Correctional Education, the local school division, and the juvenile correctional counselor, develop a reenrollment plan if the juvenile is of compulsory school attendance age or is eligible for special education services pursuant to § 22.1-213. The reenrollment plan shall be in accordance with regulations adopted by the Board of Education pursuant to § 22.1-17.1. The superintendent shall provide the juvenile's scholastic records, as defined in § 22.1-289, and the terms and conditions of any expulsion which was in effect at the time of commitment or which will be in effect upon release. A court may not order a local school board to reenroll a juvenile who has been expelled in accordance with § 22.1-277. At least fourteen days prior to the juvenile's scheduled release, the Department shall notify the school division superintendent in the locality where the juvenile will reside.

In the event it is determined by the juvenile and domestic relations district court that a juvenile or person may benefit from placement in the halfway house program operated by the Department, the juvenile or person may be referred for care and treatment to a halfway house. Juveniles or persons so placed in a halfway house shall remain in parole status and cannot be transferred or otherwise placed in another institutional setting or institutional placement operated by the Department except as elsewhere provided by law for those juveniles or persons who have violated their parole status.

In the event that the juvenile or person was in the custody of the local department of social services immediately prior to his commitment to the Department and has not attained the age of eighteen years, the local department of social services shall resume custody upon the juvenile's or person's release from commitment, unless an alternative arrangement for the custody of the juvenile or person has been made and communicated in writing to the Department. The court services unit shall consult with the local department of social services four weeks prior to the juvenile's or person's release from commitment on parole supervision concerning return of the juvenile or person to the locality and the placement of the juvenile or person. The court services unit will be responsible for supervising the juvenile's or person's terms and conditions of parole.

§ 63.1-248.3. Physicians, nurses, teachers, etc., to report certain injuries to children; penalty for failure to report.

A. The following persons who, in their professional or official capacity, have reason to suspect that a child is an abused or neglected child, shall report the matter immediately, except as hereinafter provided, to the local department of the county or city wherein the child resides or wherein the abuse or neglect is believed to have occurred or to the Department of Social Services' toll-free child abuse and neglect hotline:

1. Any person licensed to practice medicine or any of the healing arts;
2. Any hospital resident or intern, and any person employed in the nursing profession;
3. Any person employed as a social worker;
4. Any probation officer;
5. Any teacher or other person employed in a public or private school, kindergarten or nursery school;
6. Any person providing full-time or part-time child care for pay on a regularly planned basis;

7. Any duly accredited Christian Science practitioner;

8. Any mental health professional;

9. Any law-enforcement officer;

10. Any mediator eligible to receive court referrals pursuant to § 8.01-576.8;

11. Any professional staff person, not previously enumerated, employed by a private or state-operated hospital, institution or facility to which children have been committed or where children have been placed for care and treatment;

12. Any person associated with or employed by any private organization responsible for the care, custody or control of children; and

13. Any person who is designated a court-appointed special advocate pursuant to Article 1.4 (§ 9-173.6 et seq.) of Chapter 27 of Title 9.

If neither the locality in which the child resides ~~or~~ *nor* where the abuse or neglect is believed to have occurred is known, then such report shall be made to the local department of the county or city where the abuse or neglect was discovered or to the Department of Social Services' toll-free child abuse and neglect hotline.

If an employee of the local department is suspected of abusing or neglecting a child, the report shall be made to the juvenile and domestic relations district court of the county or city where the abuse or neglect was discovered. Upon receipt of such a report by the court, the judge of the juvenile and domestic relations district court shall assign the report to a local department of social services that is not the employer of the suspected employee for investigation or family assessment; ~~or, if the judge believes that no local department of social services within a reasonable geographic distance can be impartial in responding to the reported case, the judge shall assign the report to the court service unit of his court for evaluation.~~ The judge may consult with the State Department of Social Services in selecting a local department to respond to the report or the complaint.

If the information is received by a teacher, staff member, resident, intern or nurse in the course of professional services in a hospital, school or similar institution, such person may, in place of said report, immediately notify the person in charge of the institution or department, or his designee, who shall make such report forthwith.

The initial report may be an oral report but such report shall be reduced to writing by the child abuse coordinator of the local department on a form prescribed by the State Board of Social Services. The person required to make the report shall disclose all information which is the basis for his suspicion of abuse or neglect of the child and, upon request, shall make available to the child-protective services coordinator and the local department of social services, which is the agency of jurisdiction, any records or reports which document the basis for the report.

A1. For purposes of subsection A, "reason to suspect that a child is abused or neglected" shall include (i) a finding made by an attending physician within seven days of a child's birth that the results of a blood or urine test conducted within forty-eight hours of the birth of the child indicate the presence of a controlled substance not prescribed for the mother by a physician; (ii) a finding by an attending physician made within forty-eight hours of a child's birth that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis by an attending physician made within seven days of a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child; or (iv) a diagnosis by an attending physician made within seven days of a child's birth that the child has fetal alcohol syndrome attributable to in utero exposure to alcohol. When "reason to suspect" is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

B. Any person required to file a report pursuant to this section who fails to do so within seventy-two hours of his first suspicion of child abuse or neglect shall be fined not more than \$500 for the first failure and for any subsequent failures not less than \$100 nor more than \$1,000.

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