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HOUSE BILL NO. 25

Offered January 9, 2002

Prefiled December 7, 2001

A BILL to amend and reenact §§ 2.2-5211 and 2.2-5212 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 11 of Title 16.1 an article numbered 8.1, containing sections numbered 16.1-277.2 through 16.1-277.8, relating to the finding of a juvenile not guilty by reason of insanity.

Patrons—Darner and McDonnell; Senators: Mims and Trumbo

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-5211 and 2.2-5212 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 11 of Title 16.1 an article numbered 8.1, containing sections numbered 16.1-277.2 through 16.1-277.8 as follows:

§ 2.2-5211. State pool of funds for community policy and management teams.

A. There is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriation act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are to:

1. Place authority for making program and funding decisions at the community level;
2. Consolidate categorical agency funding and institute community responsibility for the provision of services;
3. Provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youths and families; and
4. Reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds that serve the target populations identified in subdivisions 1 through 5 of this subsection in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the purpose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. Children with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent foster care placements, and children placed through parental agreements, entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;

4. Children placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program; and

5. Children committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14; and

6. *Children found not guilty by reason of insanity by a court of competent jurisdiction pursuant to Article 8.1 (§ 16.1-277.2 et seq.) of Title 16.1.*

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient to (i) provide special education services and foster care services for children identified in subdivisions B. 1., B. 2. and B. 3. and, (ii) meet relevant federal mandates for the provision of these services, and (iii) *to provide necessary services to children found not guilty by reason of insanity by a court of competent jurisdiction.* The community policy and management team shall anticipate to the best of its ability the number of children for whom such

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59 services will be required and reserve funds from its state pool allocation to meet these needs. Nothing in
60 this section prohibits local governments from requiring parental or legal financial contributions, where
61 not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale
62 based upon ability to pay, as provided in the appropriation act.

63 D. When a community services board established pursuant to § 37.1-195, local school division, local
64 social service agency, court service unit, or the Department of Juvenile Justice has referred a child and
65 family to a family assessment and planning team and that team has recommended the proper level of
66 treatment and services needed by that child and family and has determined the child's eligibility for
67 funding for services through the state pool of funds, then the community services board, the local school
68 division, local social services agency, court service unit or Department of Juvenile Justice has met its
69 fiscal responsibility for that child for the services funded through the pool. Each agency shall continue
70 to be responsible for providing services identified in individual family service plans that are within the
71 agency's scope of responsibility and that are funded separately from the state pool.

72 E. In any matter properly before a court for which state pool funds are to be accessed, the court
73 shall, prior to final disposition, and pursuant to §§ 2.2-5209 and 2.2-5212, refer the matter to the
74 community policy and management team for assessment by a local family assessment and planning team
75 authorized by policies of the community policy and management team for assessment to determine the
76 recommended level of treatment and services needed by the child and family. The family assessment
77 and planning team making the assessment shall make a report of the case or forward a copy of the
78 individual family services plan to the court within thirty days of the court's written referral to the
79 community policy and management team. The court shall then consider the recommendations. However,
80 the court may make such other disposition as is authorized or required by law, and services ordered
81 pursuant to such disposition shall qualify for funding as appropriated under this section.

82 § 2.2-5212. Eligibility for state pool of funds.

83 A. In order to be eligible for funding for services through the state pool of funds, a youth, or family
84 with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 5 and shall be
85 determined through the use of a uniform assessment instrument and process and by policies of the
86 community policy and management team to have access to these funds.

87 1. The child or youth has emotional or behavior problems that:

88 a. Have persisted over a significant period of time or, though only in evidence for a short period of
89 time, are of such a critical nature that intervention is warranted;

90 b. Are significantly disabling and are present in several community settings, such as at home, in
91 school or with peers; and

92 c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal
93 agency services or routine collaborative processes across agencies, or require coordinated interventions
94 by at least two agencies.

95 2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at
96 imminent risk of entering, purchased residential care. In addition, the child or youth requires services or
97 resources that are beyond normal agency services or routine collaborative processes across agencies, and
98 requires coordinated services by at least two agencies.

99 3. The child or youth requires placement for purposes of special education in approved private school
100 educational programs.

101 4. The child or youth has been placed in foster care through a parental agreement between a local
102 social services agency or public agency designated by the community policy and management team and
103 his parents or guardians, entrusted to a local social services agency by his parents or guardian or has
104 been committed to the agency by a court of competent jurisdiction for the purposes of placement as
105 authorized by § 63.1-56.

106 5. *The child or youth is a juvenile who has been found not guilty by reason of insanity by a court of*
107 *competent jurisdiction pursuant to Article 8.1 (§ 16.1-277.2 et seq.) of Title 16.1.*

108 B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a
109 person less than eighteen years of age and (ii) any individual through twenty-one years of age who is
110 otherwise eligible for mandated services of the participating state agencies including special education
111 and foster care services.

112 C. *Any individual family services plan developed pursuant to subdivision B. 6. of § 2.2-5211 shall be*
113 *paid in total from the state pool of funds and no local match shall be required from the community*
114 *policy and management team. Costs paid from the state pool of funds shall include, but not be limited*
115 *to: evaluation, case management, and any other services and supports contained in the individual family*
116 *services plan.*

117 Article 8.1.

118 Juvenile not guilty by reason of insanity.

119 § 16.1-277.2. Juvenile not guilty by reason of insanity.

120 A juvenile alleged by petition to have engaged in a delinquent act, as defined in § 16.1-228, may

plead not guilty by reason of insanity. No juvenile shall, while he is insane or feeble-minded, be tried for a delinquent act.

§ 16.1-277.3. Procedures for finding juvenile not guilty by reason of insanity.

A. The claim that a juvenile accused of a delinquent act is not guilty by reason of insanity may be raised only by the accused juvenile or his attorney and only by motion, in cases where jurisdiction for adjudication and disposition are retained by the juvenile and domestic relations district court.

B. If, at any time before the adjudicatory proceeding, the court finds, upon hearing evidence or representations of the accused juvenile's attorney, that there is probable cause to believe that the juvenile's mental condition at the time of the offense will be a significant factor in his defense, the court shall appoint one or more qualified mental health experts to evaluate the juvenile's mental condition at the time of the offense and, where appropriate, to assist in the development of a defense of not guilty by reason of insanity. Such mental health expert shall be (i) a psychiatrist or clinical psychologist and (ii) qualified by specialized training and experience in forensic evaluation of juveniles. The Commissioner of Mental Health, Mental Retardation and Substance Abuse Services shall approve the training and qualification for individuals authorized to conduct juvenile mental condition evaluations. The Commissioner shall also provide all juvenile courts with a list of guidelines for use in the determination of qualifying individuals as experts in matters relating to mental condition evaluations. The juvenile shall not be entitled to a mental health expert of his own choosing or to funds to employ such expert.

C. The evaluation shall be performed on an outpatient basis, at a mental health facility or, if the juvenile has been detained pursuant to this chapter, in a detention facility, unless the results of the outpatient evaluation indicate that hospitalization of the juvenile is necessary for further evaluation of the juvenile's mental condition at the time of the offense. If this finding is made, the court shall have the authority to order that the juvenile be sent to a hospital or other appropriate facility designated by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for evaluation of the juvenile. Such hospitalization shall continue for such period as the facility director deems necessary to perform an adequate evaluation, up to a maximum of thirty days from hospital admission.

D. The court's order for such evaluation shall require the parties to provide to the evaluator any information relevant to the evaluation, including, but not limited to, the following: (i) a copy of the petition or warrant, including any attached affidavit; (ii) the names and addresses of the attorney for the Commonwealth, the attorney for the juvenile, and the judge appointing the evaluator; (iii) information pertaining to the alleged act, including statements made by the juvenile to the police, probation officer or others, and transcripts of preliminary hearings, if any; (iv) a summary of the reasons for the evaluation request; (v) any available psychiatric, psychological, medical or social records that are deemed relevant; and (vi) a copy of the juvenile's court records, including, without limitation, any matters alleging that the juvenile was delinquent, a child in need of supervision, a child in need of services, or an abused or neglected child.

E. The evaluators shall prepare a full report concerning the juvenile's mental condition at the time of the alleged offense, including an opinion of whether the juvenile suffers from significant mental disease or defect, which rendered him insane at the time of the offense. The report shall be prepared within the time period designated by the court, which time period may be extended by the court, upon request, if additional time is needed to obtain more information or to conduct more detailed testing.

F. The report of the evaluator shall be sent solely to the juvenile's attorney and shall be deemed to be protected by the attorney-client privilege. However, after the juvenile's attorney gives notice pursuant to § 16.1-277.4 of an intent to present psychiatric or psychological evidence, the Commonwealth shall be given the report, the results of any other evaluation of the juvenile's mental condition at the time of the alleged offense, and copies of psychiatric, psychological, medical, or other records obtained during the course of any such evaluation. No statement or disclosure made by the juvenile during the evaluation may be used against the juvenile at trial as evidence or as a basis for such evidence, except on the issue of the juvenile's mental condition at the time of the offense.

§ 16.1-277.4. Notice to the Commonwealth.

If the juvenile intends to (i) put in issue his sanity at the time of the act charged and (ii) present testimony of an expert to support his claim on this issue at his trial, he, or his counsel, shall give notice in writing to the attorney for the Commonwealth, at least twenty-one days prior to trial, of his intention to present such evidence. In the event that such notice is not given, and, the juvenile proffers such evidence at trial as a defense, then the court may, in its discretion, either allow the Commonwealth a continuance or, under appropriate circumstances, bar the juvenile from presenting such evidence. The period of any such continuance shall not be counted for speedy trial purposes under § 19.2-243.

§ 16.1-277.5. Evaluation by the Commonwealth.

A. If the attorney for the juvenile gives notice pursuant to § 16.1-277.4, and the Commonwealth thereafter seeks an evaluation of the juvenile's mental condition at the time of the act, the court shall

182 appoint one or more qualified mental health experts to perform such an evaluation. The court shall
183 order the juvenile to submit to such an evaluation and advise the juvenile in court that a refusal to
184 cooperate with the Commonwealth's expert could result in exclusion of the juvenile's expert evidence.
185 The qualification of the experts and the location of the evaluation shall be governed by the provisions of
186 § 16.1-277.3. The attorney for the Commonwealth shall be responsible for providing the experts the
187 information specified in subsection D of § 16.1-277.3. After performing their evaluation, the experts
188 shall report their findings and opinions, and provide copies of psychiatric, psychological, medical or
189 other records obtained during the course of the evaluation to the attorney for the Commonwealth and to
190 the juvenile's attorney.

191 B. If the court finds, after hearing evidence presented by the parties, that the juvenile has refused to
192 cooperate with an evaluation requested by the Commonwealth, it may admit evidence of such refusal or,
193 in the discretion of the court, bar the juvenile from presenting expert psychiatric or psychological
194 evidence at trial on the issue of the juvenile's mental condition at the time of the offense.

195 § 16.1-277.6. Disposition.

196 A. Upon finding that the juvenile is not guilty by reason of insanity, the court shall order the
197 juvenile to be placed in a secure inpatient psychiatric hospital or secure residential treatment program,
198 designated by the Commissioner of the Department of Mental Health, Mental Retardation and Substance
199 Abuse Services, to evaluate the juvenile's mental condition and to conduct a comprehensive risk
200 assessment, or, consistent with the standard in subsection E, the court shall order such evaluation and
201 risk assessment be conducted on an outpatient basis. The mental health evaluation and risk assessment
202 shall be completed by two qualified mental health experts as defined in subsection B of § 16.1-277.3,
203 who shall develop an individualized family services plan that meets the juvenile's mental health
204 treatment needs and manages identified risks to the safety of the community. The report of the
205 evaluators containing (i) the results of the evaluation of the juvenile's mental condition and the risk
206 assessment and (ii) the individualized family services plan shall be forwarded to the court within
207 twenty-one days of the court's finding.

208 B. If the individualized family services plan provided to the court in subsection A requires inpatient
209 psychiatric hospitalization for the juvenile, and the court finds that the juvenile meets the involuntary
210 commitment criteria found in subdivisions 1 and 2 of § 16.1-345, then the court shall order the juvenile
211 to be placed in an appropriate public or private hospital designated by the Commissioner of the
212 Department of Mental Health, Retardation and Substance Abuse Services.

213 C. If the individualized family services plan provided to the court in subsection A requires secure
214 residential treatment for the juvenile, the court shall order the juvenile to be placed in an appropriate
215 secure residential treatment program designated by the Commissioner of the Department of Mental
216 Health, Mental Retardation and Substance Abuse Services.

217 D. If the individualized family services plan provided to the court in subsection A does not require
218 inpatient psychiatric hospitalization or secure residential treatment, the court shall enter a disposition
219 authorized for children in need of services under §§ 16.1-278.4 and 16.1-286. Such disposition shall be
220 consistent with the individualized family services plan provided to the court in subsection A, including, if
221 appropriate, referral to the Family Assessment and Planning Team of the locality in which the juvenile
222 is a resident.

223 E. The court shall impose the least restrictive alternative disposition.

224 F. The costs of services ordered by the court pursuant to subsections A through D shall be paid from
225 funds appropriated for this purpose to the state pool of funds available under the Comprehensive
226 Services Act for At-Risk Youth and Families, Chapter 52 (§§ 2.2-5200, et seq.) of Title 2.2.

227 G. Any disposition entered by the court under this section shall automatically expire when the
228 juvenile becomes twenty years of age.

229 § 16.1-277.7. Review.

230 A. At the time the court orders a disposition under § 16.1-277.6, the court shall schedule another
231 hearing in 120 days. The court shall also order all relevant parties to appear at that time and shall
232 order the entity assuming responsibility for the juvenile to submit the report required by this section.
233 This process shall be repeated at 120-day intervals for one year, and then once yearly thereafter.

234 B. The entity that has assumed responsibility for the juvenile shall submit to the court fourteen days
235 prior to the scheduled hearing a report concerning the juvenile's current state of mental health.

236 C. If the juvenile has been found to present an unreasonable risk to the safety of the community
237 pursuant to § 16.1-277.6, the report shall include an opinion whether the juvenile continues to present
238 an unreasonable risk.

239 D. At any time, the entity that has assumed responsibility for the juvenile or the juvenile's attorney
240 may petition the court for a change of disposition. If the entity is the petitioner, it shall include with the
241 petition a report containing the material required by this section.

242 E. Copies of the required reports shall be sent to the juvenile's attorney, the attorney for the
243 Commonwealth in the jurisdiction of the original proceeding, and the community services board in the

244 same jurisdiction.

245 *F. At the scheduled time or upon receipt of a petition, the court shall hold a hearing to determine if*
246 *the disposition originally ordered under § 16.1-277.6 should be continued or changed.*

247 *G. After the hearing, the court may make any disposition set out in § 16.1-277.6, subject to the*
248 *requirement of subsection D of § 16.1-277.6, or may release the juvenile.*

249 *H. The procedures for disposition or change in disposition set out in this section are exclusive and*
250 *take precedence over any other procedures set out in the Code.*

251 *§ 16.1-277.8. Compensation of experts.*

252 *Experts appointed pursuant to this article shall be compensated as provided in § 19.2-175.*

253 **2. That the Department of Mental Health, Mental Retardation, and Substance Abuse Services shall**
254 **make an initial report to the General Assembly by December 1, 2002, and a second report by**
255 **December 1, 2003, that detail the dispositions of juveniles under the finding of "not guilty by**
256 **reason of insanity" for juveniles charged with a delinquent act in juvenile court proceedings. The**
257 **reports shall include those dispositions where courts find juveniles not guilty by reason of insanity**
258 **and order the juvenile to secure inpatient treatment or secure residential treatment, and, if the**
259 **data is available, those dispositions where courts refer juveniles in need of services to the local**
260 **family assessment and planning team for services under the Comprehensive Services Act for**
261 **At-Risk Youth and Families or other dispositions. Based on its experience administering this**
262 **program, the Department shall make any recommendations deemed necessary to assist in the**
263 **administration and enforcement of this law.**