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HOUSE BILL NO. 1355

Offered January 22, 2004

A BILL to amend and reenact § 16.1-278.8 of the Code of Virginia, relating to delinquent juveniles; disposition.

Patron—Hamilton

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-278.8 of the Code of Virginia is 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~~ 12 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) has been found delinquent for an offense ~~which~~ *that* 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~~ 12 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;

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the 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 authorized by this section. The court shall review such placements at ~~thirty~~ 30-day intervals;

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

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HB1355

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

68 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the
69 physical custody of the court during any period of curfew restriction. The court shall send an abstract of
70 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall
71 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this
72 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement
73 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be
74 noted all curfew restrictions, shall be provided to the juvenile and shall contain such information
75 regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor
76 vehicle under the court order in accordance with its terms.

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

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

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

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

86 12. In case of traffic violations, impose only those penalties ~~which~~*that* are authorized to be imposed
87 on adults for such violations. However, for those violations punishable by confinement if committed by
88 an adult, confinement shall be imposed only as authorized by this title;

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

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

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

96 c. The local board of social services of the county or city in which the court has jurisdiction or, at
97 the discretion of the court, to the local board of the county or city in which the juvenile has residence if
98 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for
99 care and custody, provided that it has been given reasonable notice of the pendency of the case and an
100 opportunity to be heard. However, in an emergency in the county or city in which the court has
101 jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed
102 ~~fourteen~~14 days without prior notice or an opportunity to be heard if the judge entering the placement
103 order describes the emergency and the need for such temporary placement in the order. Nothing in this
104 subdivision shall prohibit the commitment of a juvenile to any local board of social services in the
105 Commonwealth when such local board consents to the commitment. The board to which the juvenile is
106 committed shall have the final authority to determine the appropriate placement for the juvenile. Any
107 order authorizing removal from the home and transferring legal custody of a juvenile to a local board of
108 social services as provided in this subdivision shall be entered only upon a finding by the court that
109 reasonable efforts have been made to prevent removal and that continued placement in the home would
110 be contrary to the welfare of the juvenile, and the order shall so state;

111 14. Commit the juvenile to the Department of Juvenile Justice, but only if he is ~~eleven~~11 years of
112 age or older and the current offense is (i) an offense ~~which~~*that* would be a felony if committed by an
113 adult, (ii) an offense ~~which~~*that* would be a Class 1 misdemeanor if committed by an adult and the
114 juvenile has previously been found to be delinquent based on an offense ~~which~~*that* would be a felony if
115 committed by an adult, or (iii) an offense ~~which~~*that* would be a Class 1 misdemeanor if committed by
116 an adult and the juvenile has previously been adjudicated delinquent on three *separate* occasions *and*
117 *had three separate disposition hearings* for offenses ~~which~~*that* would be Class 1 misdemeanors if
118 committed by an adult;

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

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

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

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

123 19. Require the juvenile to participate in a gang-activity prevention program including, but not
124 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to
125 § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations:
126 §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127,
127 18.2-128, 18.2-137, 18.2-138, 18.2-146, or § 18.2-147, or any violation of a local ordinance adopted
128 pursuant to § 18.2-138.1.

129 B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the
130 juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the
131 offense, or for actual medical expenses incurred by the victim as a result of the offense: §§ 18.2-51,
132 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128,
133 18.2-137, 18.2-138, 18.2-146, or § 18.2-147; or for any violation of a local ordinance adopted pursuant
134 to § 18.2-138.1. The court shall further require the juvenile to participate in a community service project
135 under such conditions as the court prescribes.