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**HOUSE BILL NO. 653**

Offered January 14, 2004

Prefiled January 13, 2004

*A BILL to amend and reenact §§ 16.1-247 and 16.1-249 of the Code of Virginia, relating to custody and confinement for juvenile offenses.*

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 Patron—Bell
 

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-247 and 16.1-249 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-247. Duties of person taking child into custody.

A. A person taking a child into custody pursuant to the provisions of § 16.1-246 A, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto, bring the child to the judge or intake officer of the court and the judge, intake officer or arresting officer shall, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

B. A person taking a child into custody pursuant to the provisions of subsection B, C or D of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to such child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for such child and issue oral counsel and warning as may be appropriate; or

2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis upon their promise to bring the child before the court when requested; or

3. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis. Nothing herein shall prevent the child from being held for the purpose of administering a blood or breath test to determine the alcoholic content of his blood where the child has been taken into custody pursuant to § 18.2-266.

C. A person taking a child into custody pursuant to the provisions of subsections E and F of § 16.1-246, during such hours as the court is open, shall, with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to the institution, facility or home from which he ran away or escaped; or

2. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the institution, facility or home in which the child had been placed and orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

D. A person taking a child into custody pursuant to the provisions of § 16.1-246 A, during such hours as the court is not open, shall with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child taken into custody pursuant to a warrant on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2; or

2. Place the child in a detention home or in shelter care; or

3. Place the child in a jail subject to the provisions of § 16.1-249.

E. A person taking a child into custody pursuant to the provisions of subsection B, C or D of § 16.1-246 during such hours as the court is not open, shall:

1. Release the child pursuant to the provisions of subdivision B 1 or B 2 of this section; or

2. Release the child on bail or recognizance pursuant to Chapter 9 of Title 19.2; or

3. Place the child taken into custody pursuant to § 16.1-246 B in shelter care after the issuance of a detention order pursuant to § 16.1-255; or

4. Place the child taken into custody pursuant to subsection C or D of § 16.1-246 in shelter care or

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HB653

59 in a detention home after the issuance of a warrant by a magistrate; or

60 5. Place the child in a jail subject to the provisions of § 16.1-249 after the issuance of a warrant by a  
61 magistrate *or after the issuance of a detention order pursuant to § 16.1-255*; or

62 6. In addition to any other provisions of this subsection, detain the child for a reasonably necessary  
63 period of time in order to administer a breath or blood test to determine the alcohol content of his  
64 blood, if such child was taken into custody pursuant to § 18.2-266.

65 F. A person taking a child into custody pursuant to the provisions of § 16.1-246 E, during such hours  
66 as the court is not open, shall:

67 1. Release the child to the institution or facility from which he ran away or escaped; or

68 2. Detain the child in a detention home or in a jail subject to the provisions of § 16.1-249 after the  
69 issuance of a warrant by a magistrate *or after the issuance of a detention order pursuant to § 16.1-255*.

70 G. A person taking a child into custody pursuant to the provisions of § 16.1-246 F, during such  
71 hours as the court is not open, shall:

72 1. Release the child to the facility or home from which he ran away; or

73 2. Detain the child in shelter care after the issuance of a detention order pursuant to § 16.1-255 or  
74 after the issuance of a warrant by a magistrate.

75 H. If a parent, guardian or other custodian fails, when requested, to bring the child before the court  
76 as provided in subdivisions B 2 and E 1 hereof, the court may issue a detention order directing that the  
77 child be taken into custody and be brought before the court.

78 I. A law-enforcement officer taking a child into custody pursuant to the provisions of § 16.1-246 G  
79 shall notify the intake officer of the juvenile court of the action taken. The intake officer shall determine  
80 if the child's conduct or situation is within the jurisdiction of the court and if a petition should be filed  
81 on behalf of the child. If the intake officer determines that a petition should not be filed, the  
82 law-enforcement officer shall as soon as practicable:

83 1. Return the child to his home;

84 2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco  
85 parentis;

86 3. Place the child in shelter care for a period not longer than ~~twenty-four~~ 24 hours after the issuance  
87 of a detention order pursuant to § 16.1-255; or

88 4. Release the child.

89 During the period of detention authorized by this subsection no child shall be confined in any  
90 detention home, jail or other facility for the detention of adults.

91 J. If a child is taken into custody pursuant to the provisions of subsection B, F or G of § 16.1-246  
92 by a law-enforcement officer during such hours as the court is not in session and the child is not  
93 released or transferred to a facility or institution in accordance with subsection E, G, or I of this section,  
94 the child shall be held in custody only so long as is reasonably necessary to complete identification,  
95 investigation and processing. The child shall be held under visual supervision in a nonlocked,  
96 multipurpose area which is not designated for residential use. The child shall not be handcuffed or  
97 otherwise secured to a stationary object.

98 § 16.1-249. Places of confinement for juveniles.

99 A. If it is ordered that a juvenile remain in detention or shelter care pursuant to § 16.1-248.1, such  
100 juvenile may be detained, pending a court hearing, in the following places:

101 1. An approved foster home or a home otherwise authorized by law to provide such care;

102 2. A facility operated by a licensed child welfare agency;

103 3. If a juvenile is alleged to be delinquent, in a detention home or group home approved by the  
104 Department;

105 4. Any other suitable place designated by the court and approved by the Department;

106 5. To the extent permitted by federal law, a separate juvenile detention facility located upon the site  
107 of an adult regional jail facility established by any county, city or any combination thereof constructed  
108 after 1994, approved by the Department of Juvenile Justice and certified by the Board of Juvenile  
109 Justice for the holding and detention of juveniles.

110 B. No juvenile shall be detained or confined in any jail or other facility for the detention of adult  
111 offenders or persons charged with crime except as provided in subsection D, E, F or G of this section.

112 C. The official in charge of a jail or other facility for the detention of adult offenders or persons  
113 charged with crime shall inform the court immediately when a juvenile who is or appears to be under  
114 the age of ~~eighteen~~ 18 years is received at the facility, and shall deliver him to the court upon request,  
115 or transfer him to a detention facility designated by the court.

116 D. When a case is transferred to the circuit court in accordance with the provisions of subsection A  
117 of § 16.1-269.1 and an order is entered by the circuit court in accordance with § 16.1-269.6, or in  
118 accordance with the provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the  
119 district court, or when the district court has certified a charge to the grand jury pursuant to subsection B  
120 or C of § 16.1-269.1, the juvenile, if in confinement, may be transferred to a jail or other facility for the

121 detention of adults and need no longer be entirely separate and removed from adults.

122 E. If, in the judgment of the custodian, a juvenile has demonstrated that he is a threat to the security  
123 or safety of the other juveniles detained or the staff of the home or facility, the judge shall determine  
124 whether such juvenile should be transferred to another juvenile facility or, if the child is ~~fourteen~~ 14  
125 years of age or older, a jail or other facility for the detention of adults; provided, that (i) the detention is  
126 in a room or ward entirely separate and removed from adults, (ii) adequate supervision is provided, and  
127 (iii) the facility is approved by the State Board of Corrections for detention of juveniles.

128 F. If, in the judgment of the custodian, it has been demonstrated that the presence of a juvenile in a  
129 facility creates a threat to the security or safety of the other juveniles detained or the staff of the home  
130 or facility, the custodian may transfer the juvenile to another juvenile facility, or, if the child is ~~fourteen~~  
131 14 years of age or older, a jail or other facility for the detention of adults pursuant to the limitations of  
132 clauses (i), (ii) and (iii) of subsection E for a period not to exceed six hours prior to a court hearing and  
133 an additional six hours after the court hearing unless a longer period is ordered pursuant to subsection E.

134 G. If a juvenile ~~fourteen~~ 14 years of age or older is charged with an offense which, if committed by  
135 an adult, would be a felony or Class 1 misdemeanor, and the judge or intake officer determines that  
136 secure detention is needed for the safety of the juvenile or the community, such juvenile may be  
137 detained for a period not to exceed six hours prior to a court hearing and six hours after the court  
138 hearing in a temporary lock-up room or ward for juveniles while arrangements are completed to transfer  
139 the juvenile to a juvenile facility. Such room or ward may be located in a building which also contains  
140 a jail or other facility for the detention of adults, provided (i) such room or ward is totally separate and  
141 removed from adults or juveniles transferred to the circuit court pursuant to Article 7 (§ 16.1-269.1 et  
142 seq.) of this chapter, (ii) constant supervision is provided, and (iii) the facility is approved by the State  
143 Board of Corrections for the detention of juveniles. The State Board of Corrections is authorized and  
144 directed to prescribe minimum standards for temporary lock-up rooms and wards based on the  
145 requirements set out in this subsection.

146 G1. Any juvenile who has been ordered detained in a secure detention facility pursuant to  
147 § 16.1-248.1 may be held incident to a court hearing (i) in a court holding cell for a period not to  
148 exceed six hours provided the juvenile is entirely separate and removed from detained adults or (ii) in a  
149 nonsecure area provided constant supervision is provided.

150 H. If a judge, *intake officer or magistrate* orders the predispositional detention of persons ~~eighteen~~  
151 18 years of age or older, such detention shall be in an adult facility; however, if the predispositional  
152 detention is ordered for a violation of the terms and conditions of release from a juvenile correctional  
153 center, the judge, *intake officer or magistrate* may order such detention be in a juvenile facility.

154 I. The Departments of Corrections, Juvenile Justice and Criminal Justice Services shall assist the  
155 localities or combinations thereof in implementing this section and ensuring compliance herewith.