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SENATE BILL NO. 1067

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance
on February 1, 2005)

(Patron Prior to Substitute—Senator Edwards)

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

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; penalty.

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 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 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 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 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 as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such

60 terms and conditions as the court may order. The court, in its discretion and upon a demonstration of
61 hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who
62 enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to
63 and from school. The restricted permit shall be issued in accordance with the provisions of such
64 subsection. However, only an abstract of the court order that identifies the juvenile and the conditions
65 under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

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

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

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

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

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

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

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

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

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

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

109 14. Commit the juvenile to the Department of Juvenile Justice, but only if he is 11 years of age or
110 older and the current offense is (i) an offense that would be a felony if committed by an adult; (ii) an
111 offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously
112 been found to be delinquent based on an offense that would be a felony if committed by an adult; or
113 (iii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has
114 previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor
115 if committed by an adult, and each such offense was not a part of a common act, transaction or scheme;
116 or (iv) a violation of § 18.2-308.7, if the juvenile has been previously found delinquent based on an
117 offense that would be a Class 1 misdemeanor if committed by an adult and if the liberty of the juvenile
118 constitutes a clear and substantial threat to the life or health of the juvenile or others;

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 § 15.2-1812.2.

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 § 15.2-1812.2. The court shall further require the juvenile to participate in a community service
135 project under such conditions as the court prescribes.

136 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
137 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0**
138 **for periods of imprisonment in state adult correctional facilities and is \$204,796 for periods of**
139 **commitment to the custody of the Department of Juvenile Justice.**