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HOUSE BILL NO. 1332

Offered January 11, 2006

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A BILL to amend and reenact §§ 16.1-249, 16.1-269.5, 16.1-269.6, 16.1-284, 16.1-291, and 16.1-292 of the Code of Virginia, relating to the placement of adults in juvenile detention facilities.

 Patron—Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-249, 16.1-269.5, 16.1-269.6, 16.1-284, 16.1-291, and 16.1-292 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-249. Places of confinement for juveniles.

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

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

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

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

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

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

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

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

D. When a case is transferred to the circuit court in accordance with the provisions of subsection A of § 16.1-269.1 and an order is entered by the circuit court in accordance with § 16.1-269.6, or in accordance with the provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the district court, or when the district court has certified a charge to the grand jury pursuant to subsection B or C of § 16.1-269.1, the juvenile, if in confinement, may be transferred to a jail or other facility for the detention of adults and need no longer be entirely separate and removed from adults.

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

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

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

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59 prescribe minimum standards for temporary lock-up rooms and wards based on the requirements set out
60 in this subsection.

61 G1. Any juvenile who has been ordered detained in a secure detention facility pursuant to
62 § 16.1-248.1 may be held incident to a court hearing (i) in a court holding cell for a period not to
63 exceed six hours provided the juvenile is entirely separate and removed from detained adults or (ii) in a
64 nonsecure area provided constant supervision is provided.

65 H. If a judge, intake officer or magistrate orders the predispositional detention of persons 18 years of
66 age or older, such detention shall be in an adult facility.; ~~however, if the predispositional detention is~~
67 ~~ordered for a violation of the terms and conditions of release from a juvenile correctional center, the~~
68 ~~judge, intake officer or magistrate may order such detention be in a juvenile facility. If the person~~
69 ~~attains the age of 18 while detained in a juvenile facility, that person shall be transferred to an adult~~
70 ~~facility upon attaining such age.~~

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

73 § 16.1-269.5. Placement of juvenile.

74 The juvenile court ~~may~~shall order placement of the transferred juvenile in ~~either~~ a local correctional
75 facility as approved by the State Board of Corrections pursuant to the limitations of subsection E of
76 § 16.1-249 ~~or a juvenile detention facility.~~

77 § 16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and
78 appeals.

79 A. Within seven days after receipt of notice of an appeal from the transfer decision pursuant to
80 subsection A of § 16.1-269.1, by either the attorney for the Commonwealth or the juvenile, or if an
81 appeal to such a decision to transfer is not noted, upon expiration of the time in which to note such an
82 appeal, the clerk of the court shall forward to the circuit court all papers connected with the case,
83 including any report required by subsection B of § 16.1-269.2, as well as a written court order setting
84 forth the reasons for the juvenile court's decision. Within seven days after receipt of notice of an appeal,
85 the clerk shall forward copies of the order to the attorney for the Commonwealth and other counsel of
86 record.

87 B. The circuit court, when practicable, shall, within 45 days after receipt of the case from the
88 juvenile court pursuant to subsection A of § 16.1-269.1, (i) if either the juvenile or the attorney for the
89 Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and
90 conduct a hearing to take further evidence on the issue of transfer, to determine if there has been
91 substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the
92 juvenile court had sufficient evidence to find probable cause; and (ii) enter an order either remanding
93 the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an
94 indictment. A juvenile held continuously in secure detention shall be released from confinement if there
95 is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may
96 extend the time limitations for a reasonable period of time based upon good cause shown, provided the
97 basis for such extension is recorded in writing and filed among the papers of the proceedings. Upon
98 advising the attorney for the Commonwealth that he may seek an indictment, the circuit court ~~may~~shall
99 issue an order transferring the juvenile from the juvenile detention facility to an appropriate local
100 correctional facility where the juvenile need no longer be entirely separate and removed from adults,
101 unless, upon motion of counsel, good cause is shown for placement of the juvenile pursuant to the
102 limitations of subdivision E (i), (ii), and (iii) of § 16.1-249. However, in cases where a charge has been
103 certified by the juvenile court to the grand jury pursuant to subsection B or C of § 16.1-269.1, the
104 attorney for the Commonwealth may seek an indictment upon such charge and any ancillary charge
105 without obtaining an order of the circuit court advising him that he may do so.

106 C. The circuit court order advising the attorney for the Commonwealth that he may seek an
107 indictment shall divest the juvenile court of its jurisdiction over the case as well as the juvenile court's
108 jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme
109 giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the
110 juvenile following transfer or certification and trial as an adult, the circuit court shall issue an order
111 terminating the juvenile court's jurisdiction over that juvenile with respect to any future criminal acts
112 alleged to have been committed by such juvenile and with respect to any pending allegations of
113 delinquency which have not been disposed of by the juvenile court at the time of the criminal
114 conviction. However, such an order terminating the juvenile court's jurisdiction shall not apply to any
115 allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and
116 domestic relations district court if the defendant were an adult. Upon receipt of the order terminating the
117 juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending
118 petitions of delinquency for proceedings in the appropriate general district court.

119 D. The judge of the circuit court who reviewed the case after receipt from the juvenile court shall
120 not, over the objection of any interested party, preside over the trial of such charge or charges.

E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not made before arraignment.

F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included as applying to the provisions of § 19.2-243.

§ 16.1-284. When adult sentenced for juvenile offense.

When the juvenile court sentences an adult who has committed, before attaining the age of eighteen, an offense which would be a crime if committed by an adult, the court may impose the penalties which are authorized to be imposed on adults for such violations, not to exceed the punishment for a Class 1 misdemeanor for a single offense or multiple offenses. *Should such penalty include detention, the person shall be held in an adult facility.*

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

A. A 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 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 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.

B. If a 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. 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, *and that the child is and will be under the age of 18 during confinement*, 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.

§ 16.1-292. Violation of court order by any person.

A. Any person violating an order of the juvenile court entered pursuant to §§ 16.1-278.2 through 16.1-278.19, including a parent subject to an order issued pursuant to subdivision 3 of § 16.1-278.8, may be proceeded against (i) by an order requiring the person to show cause why the order of the court entered pursuant to §§ 16.1-278.2 through 16.1-278.19 has not been complied with, (ii) for contempt of

182 court pursuant to § 16.1-69.24 or as otherwise provided in this section, or (iii) by both. Except as
183 otherwise expressly provided herein, nothing in this chapter shall deprive the court of its power to
184 punish summarily for contempt for such acts as set forth in § 18.2-456, or to punish for contempt after
185 notice and an opportunity for a hearing on the contempt except that confinement in the case of a
186 juvenile shall be in a secure facility for juveniles rather than in jail and shall not exceed a period of ten
187 days for each offense. However, if the person violating the order was a juvenile at the time of the
188 original act and is eighteen years of age or older when the court enters a disposition for violation of the
189 order, the judge ~~may~~*shall* order confinement in jail.

190 B. Upon conviction of any party for contempt of court in failing or refusing to comply with an order
191 of a juvenile court for spousal support or child support under § 16.1-278.15, the court may commit and
192 sentence such party to confinement in a jail, workhouse, city farm or work squad as provided in
193 §§ 20-61 and 20-62, for a fixed or indeterminate period or until the further order of the court. In no
194 event, however, shall such sentence be imposed for a period of more than twelve months. The sum or
195 sums as provided for in § 20-63 shall be paid as therein set forth, to be used for the support and
196 maintenance of the spouse or the child or children for whose benefit such order or decree provided.

197 C. Notwithstanding the contempt power of the court, the court shall be limited in the actions it may
198 take with respect to a child violating the terms and conditions of an order to those which the court
199 could have taken at the time of the court's original disposition pursuant to §§ 16.1-278.2 through
200 16.1-278.10, except as hereinafter provided. However, this limitation shall not be construed to deprive
201 the court of its power to (i) punish a child summarily for contempt for acts set forth in § 18.2-456 or
202 (ii) punish a child for contempt for violation of a dispositional order in a delinquency proceeding after
203 notice and an opportunity for a hearing regarding such contempt, including acts of disobedience of the
204 court's dispositional order which are committed outside the presence of the court.

205 D. In the event a child in need of services is found to have willfully and materially violated for a
206 second or subsequent time the order of the court pursuant to § 16.1-278.4, the dispositional alternatives
207 specified in subdivision 9 of § 16.1-278.8 shall be available to the court.

208 E. In the event a child in need of supervision is found to have willfully and materially violated an
209 order of the court pursuant to § 16.1-278.5, the court may enter any of the following orders of
210 disposition:

211 1. Suspend the child's motor vehicle driver's license;

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

226 F. Nothing in this section shall be construed to reclassify a child in need of services or in need of
227 supervision as a delinquent.