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HOUSE BILL NO. 463

Offered January 11, 2012

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A BILL to amend and reenact §§ 16.1-278.7, 16.1-278.8, 16.1-293, and 66-23 of the Code of Virginia, relating to legal custody of juveniles transferred to the Department of Juvenile Justice.

 Patron—Byron

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.7, 16.1-278.8, 16.1-293, and 66-23 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.7. Commitment to Department of Juvenile Justice.

Only a juvenile who is adjudicated as a delinquent and is 11 years of age or older may be committed to the Department of Juvenile Justice. Unless previously completed, at the time a court commits a child to the *legal custody of the* Department of Juvenile Justice the court shall order an investigation pursuant to § 16.1-273 to be completed within 15 days. No juvenile court or circuit court shall order the commitment *and transfer of legal custody* of any child jointly to the Department of Juvenile Justice and to a local board of social services or transfer the *legal custody* of a child jointly to a court service unit of a juvenile court and to a local board of social services. Any person sentenced and committed to an active term of incarceration in the Department of Corrections who is, at the time of such sentencing, in the *legal custody* of the Department of Juvenile Justice, upon pronouncement of sentence, shall be immediately transferred to the Department of Corrections.

§ 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 specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, 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 specific period of time established by the court with due regard for the gravity of the offense and the juvenile's history, 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;

59 7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

60 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or
61 drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the
62 treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse
63 screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the
64 commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs
65 and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not
66 previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such
67 facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of
68 participation in the program, he shall be brought before the court for a hearing at which the court may
69 impose any other disposition authorized by this section. The court shall review such placements at
70 30-day intervals;

71 8. Impose a fine not to exceed \$500 upon such juvenile;

72 9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile
73 as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is
74 suspended may be referred for an assessment and subsequent referral to appropriate services, upon such
75 terms and conditions as the court may order. The court, in its discretion and upon a demonstration of
76 hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who
77 enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to
78 and from school. The restricted permit shall be issued in accordance with the provisions of such
79 subsection. However, only an abstract of the court order that identifies the juvenile and the conditions
80 under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

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

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

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

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

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

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

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

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

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

109 c. The local board of social services of the county or city in which the court has jurisdiction or, at
110 the discretion of the court, to the local board of the county or city in which the juvenile has residence if
111 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for
112 care and custody, provided that it has been given reasonable notice of the pendency of the case and an
113 opportunity to be heard. However, in an emergency in the county or city in which the court has
114 jurisdiction, such local board may be required to temporarily accept a juvenile for a period not to exceed
115 14 days without prior notice or an opportunity to be heard if the judge entering the placement order
116 describes the emergency and the need for such temporary placement in the order. Nothing in this
117 subdivision shall prohibit the commitment of a juvenile to any local board of social services in the
118 Commonwealth when such local board consents to the commitment. The board to which the juvenile is
119 committed shall have the final authority to determine the appropriate placement for the juvenile. Any
120 order authorizing removal from the home and transferring legal custody of a juvenile to a local board of

social services as provided in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the juvenile, and the order shall so state;

14. Commit the juvenile to the *legal custody of the* Department of Juvenile Justice, but only if he is 11 years of age or older and the current offense is (i) an offense that would be a felony if committed by an adult, (ii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent based on an offense that would be a felony if committed by an adult, or (iii) an offense that would be a Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a part of a common act, transaction or scheme;

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

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

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

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

19. Require the juvenile to participate in a gang-activity prevention program including, but not limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: § 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, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to § 15.2-1812.2.

B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the offense, or for actual medical expenses incurred by the victim as a result of the offense: § 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, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to § 15.2-1812.2. The court shall further require the juvenile to participate in a community service project under such conditions as the court prescribes.

§ 16.1-293. Supervision of juvenile or person during commitment and on parole; placing juvenile in halfway house.

At such time as the court commits a juvenile to the Department, the juvenile and domestic relations district court service unit shall maintain contact with the juvenile during the juvenile's commitment.

If a person is placed on parole supervision following that person's release from commitment to the Department, the court services unit providing parole supervision shall furnish the person a written statement of the conditions of his parole and shall instruct him regarding the same. The conditions of the reenrollment plan may be included in the conditions of parole. Violations of parole shall be heard by the court pursuant to § 16.1-291. If the parole supervision is for an indeterminate period of time, the director of the supervising court services unit may approve termination of parole supervision.

The Department shall notify the school division superintendent in the locality where the person was enrolled of his commitment to a facility. The court services unit shall, in consultation with the Department of Correctional Education, the local school division, and the juvenile correctional counselor, develop a reenrollment plan if the person is of compulsory school attendance age or is eligible for special education services pursuant to § 22.1-213. The reenrollment plan shall be in accordance with regulations adopted by the Board of Education pursuant to § 22.1-17.1. The superintendent shall provide the person's scholastic records, as defined in § 22.1-289, and the terms and conditions of any expulsion which was in effect at the time of commitment or which will be in effect upon release. A court may not order a local school board to reenroll a person who has been expelled in accordance with the procedures set forth in § 22.1-277.06. At least 14 days prior to the person's scheduled release, the Department shall notify the school division superintendent in the locality where the person will reside.

In the event it is determined by the juvenile and domestic relations district court that a person may benefit from placement in the halfway house program operated by the Department, the person may be referred for care and treatment to a halfway house. Persons so placed in a halfway house shall remain in parole status and cannot be transferred or otherwise placed in another institutional setting or institutional placement operated by the Department except as elsewhere provided by law for those persons who have violated their parole status.

In the event that the person was in the *legal custody of the* local department of social services immediately prior to his commitment to the Department and has not attained the age of 18 years, the local department of social services shall resume *legal custody* upon the person's release from commitment, unless an alternative arrangement for the custody of the person has been made and communicated in writing to the Department. At least 90 days prior to the person's release from commitment on parole supervision, (i) the court services unit shall consult with the local department of

182 social services concerning return of the person to the locality and the placement of the person and (ii)
183 the local department of social services and the court services unit shall collaborate to develop a plan that
184 prepares the person for successful transition from the Department's commitment to the custody of the
185 local department of social services or to an alternative custody arrangement if applicable. The plan shall
186 identify the services necessary for such transition and how the services are to be provided. The court
187 services unit will be responsible for supervising the person's terms and conditions of parole.

188 § 66-23. Authority of superintendents with regard to children in their facilities.

189 ~~The superintendents~~ *Each superintendent* of facilities established by the Department shall have the
190 authority, commensurate with that of a parent in like cases, ~~to give consent for those children with~~
191 ~~respect to any child placed in their respective facilities~~ *his facility* to (i) authorize application for a
192 motor vehicle operator's license ~~and by the child,~~ (ii) ~~issuance of~~ *authorize application* for an
193 employment certificate ~~by the child,~~ and (iii) *exercise any and all other rights and duties as the legal*
194 *custodian of the child, including, without limitation, the right to consent to medical treatment.* Such
195 authority shall be exercised in accordance with regulations established by the Board.