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## SENATE BILL NO. 928

Offered January 9, 2013

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A *BILL to amend and reenact §§ 16.1-248.2, 16.1-273, 16.1-274, and 16.1-278.8 of the Code of Virginia, relating to mental health assessments for certain juveniles.*

Patron—Vogel

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-248.2, 16.1-273, 16.1-274, and 16.1-278.8 of the Code of Virginia are amended and reenacted as follows:**

**§ 16.1-248.2. Mental health screening and assessment for certain juveniles.**

Whenever a juvenile is placed in a secure facility pursuant to § 16.1-248.1, the staff of the facility shall gather such information from the juvenile and the probation officer as is reasonably available and deemed necessary by the facility staff. As part of the intake procedures at each such facility, the staff shall ascertain the juvenile's need for a mental health assessment. If it is determined that the juvenile needs such an assessment, the assessment shall take place within twenty-four hours of such determination. The community services board serving the jurisdiction where the facility is located shall be responsible for conducting the assessments and shall be compensated from funds appropriated to the Department of Juvenile Justice for this purpose. The Department of Juvenile Justice shall develop criteria and a compensation plan for such assessments. *A copy of the assessment and its findings shall be sent to the superintendent of the secure facility.*

*The superintendent of the secure facility or his designee shall inform the juvenile's assigned probation officer in writing of the findings of the assessment. If the attorney for the Commonwealth is seeking commitment of a child adjudicated delinquent and a mental health assessment completed pursuant to this section has identified a serious mental health problem that can be diagnosed under the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association, the juvenile's probation officer shall advise the court of this finding and the requirement to order an evaluation under subsection B of § 16.1-273.*

**§ 16.1-273. Court may require investigation of social history and preparation of victim impact statement.**

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which (i) shall include a drug screening and (ii) may, and for the purposes of § 16.1-278.7 shall, include the physical, mental and social conditions, including an assessment of any affiliation with a criminal street gang as defined in § 18.2-46.1, and personality of the child and the facts and circumstances surrounding the violation of law. However, in the case of a juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000, which would be a felony if committed by an adult, or a violation under Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a Class 1 or Class 2 misdemeanor if committed by an adult, the court shall order the juvenile to undergo a drug screening. If the drug screening indicates that the juvenile has a substance abuse or dependence problem, an assessment shall be completed by a certified substance abuse counselor as defined in § 54.1-3500 employed by the Department of Juvenile Justice or by a locally operated court services unit or by an individual employed by or currently under contract to such agencies and who is specifically trained to conduct such assessments under the supervision of such counselor.

B. *If the attorney for the Commonwealth is seeking commitment of a child adjudicated delinquent and a mental health assessment completed pursuant to § 16.1-248.2 has identified a mental health need or mental illness, the court shall direct the appropriate public agency to evaluate the child's service needs using an interdisciplinary team approach. The team shall consist of qualified personnel who are reasonably available from the following community agencies: community services board established pursuant to § 37.2-501, juvenile court services unit, department of social services, local school division, and other appropriate and available public and private agencies. A family assessment and planning team established pursuant to § 2.2-5207 shall be considered a qualified team. In lieu of directing that an evaluation be made, the court may consider the report of an interdisciplinary team concerning the*

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59 *child if such team met not more than 90 days prior. A report of the evaluation shall be filed as*  
60 *provided in subsection A of § 16.1-274 prior to disposition of the matter.*

61 C. The court also shall, on motion of the attorney for the Commonwealth with the consent of the  
62 victim, or may in its discretion, require the preparation of a victim impact statement in accordance with  
63 the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant  
64 physical, psychological or economic injury as a result of the violation of law.

65 **§ 16.1-274. Time for filing of reports; copies furnished to attorneys; amended reports; fees.**

66 A. Whenever (i) any court directs an investigation pursuant to subdivision A of § 16.1-237 or §  
67 16.1-273 or 9.1-153, or an evaluation pursuant to § 16.1-278.5, or (ii) *an evaluation pursuant to*  
68 *subsection B of § 16.1-273 has been conducted for a juvenile adjudicated delinquent and found eligible*  
69 *for commitment*, the probation officer, court-appointed special advocate, or other agency conducting such  
70 investigation or evaluation shall file such report with the clerk of the court directing the investigation or  
71 evaluation. The clerk shall furnish a copy of such report to all attorneys representing parties in the  
72 matter before the court no later than 72 hours, and in cases of child custody, 15 days, prior to the time  
73 set by the court for hearing the matter. If such probation officer or other agency discovers additional  
74 information or a change in circumstance after the filing of the report, an amended report shall be filed  
75 forthwith and a copy sent to each person who received a copy of the original report. Whenever such a  
76 report is not filed or an amended report is filed, the court shall grant such continuance of the  
77 proceedings as justice requires. All attorneys receiving such report or amended report shall return such  
78 to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended  
79 report or any portion thereof. However, the chief judge of each juvenile and domestic relations district  
80 court may provide for an alternative means of copying and distributing reports or amended reports filed  
81 pursuant to § 9.1-153.

82 B. Notwithstanding the provisions of §§ 16.1-69.48:2 and 17.1-275, when the court directs the  
83 appropriate local department of social services to conduct supervised visitation or directs the appropriate  
84 local department of social services or court services unit to conduct an investigation pursuant to  
85 § 16.1-273 or to provide mediation services in matters involving a child's custody, visitation, or support,  
86 the court shall assess a fee against the petitioner, the respondent, or both, in accordance with fee  
87 schedules established by the appropriate local board of social services when the service is provided by a  
88 local department of social services or by a court services unit. The fee schedules shall include (i)  
89 standards for determining the paying party's or parties' ability to pay and (ii) a scale of fees based on  
90 the paying party's or parties' income and family size and the actual cost of the services provided. The  
91 fee charged shall not exceed the actual cost of the service. The fee shall be assessed as a cost of the  
92 case and shall be paid as prescribed by the court to the local department of social services, locally  
93 operated court services unit or Department of Juvenile Justice, whichever performed the service, unless  
94 payment is waived. The method and medium for payment for such services shall be determined by the  
95 local department of social services, Department of Juvenile Justice, or the locally operated court services  
96 unit that provided the services.

97 C. When a local department of social services or any court services unit is requested by another local  
98 department or court services unit in the Commonwealth or by a similar department or entity in another  
99 state to conduct an investigation involving a child's custody, visitation or support pursuant to § 16.1-273  
100 or, in the case of a request from another state pursuant to a provision corresponding to § 16.1-273, or to  
101 provide mediation services, or for a local department of social services to provide supervised visitation,  
102 the local department or the court services unit performing the service may require payment of fees prior  
103 to conducting the investigation or providing mediation services or supervised visitation.

104 **§ 16.1-278.8. Delinquent juveniles.**

105 A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a  
106 blood or breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit  
107 court may make any of the following orders of disposition for his supervision, care and rehabilitation:

108 1. Enter an order pursuant to the provisions of § 16.1-278;  
109 2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the  
110 court may order with respect to the juvenile and his parent;

111 3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such  
112 treatment or be subject to such conditions and limitations as the court may order and as are designed for  
113 the rehabilitation of the juvenile and his parent;

114 4. Defer disposition for a specific period of time established by the court with due regard for the  
115 gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the  
116 judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

117 4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a  
118 boot camp established pursuant to § 66-13 provided bed space is available for confinement and the  
119 juvenile (i) has been found delinquent for an offense that would be a Class 1 misdemeanor or felony if  
120 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;

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

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

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

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

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

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

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

13. Transfer legal custody to any of the following:

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

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

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

*If an interdisciplinary team report has been filed pursuant to subdivision B of § 16.1-273, the court shall consider the report and may (i) find the child to be in need of services and enter an order of disposition authorized by § 16.1-278.4 for a child in need of services, (ii) order any dispositional alternatives permitted by this section, or (iii) if the court finds that all other appropriate treatment options in the community have been exhausted and that commitment is needed to meet the child's service needs, commit the child to the Department of Juvenile Justice. The court shall state in its order for commitment the basis for all findings required by this subdivision;*

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.