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SENATE BILL NO. 128

Offered January 8, 2014

Prefiled December 30, 2013

A BILL to amend and reenact §§ 16.1-272, 16.1-273, 16.1-278.7, and 16.1-278.8 of the Code of Virginia, relating to commitment of juvenile to the Department of Juvenile Justice; consideration of social history.

Patrons—Favola; Delegates: BaCote and Peace

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-272, 16.1-273, 16.1-278.7, and 16.1-278.8 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-272. Power of circuit court over juvenile offender.

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge, the court shall fix the sentence without the intervention of a jury.

1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case including, but not limited to, commitment under subdivision A 14 of § 16.1-278.8 or § 16.1-285.1.

2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

3. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.

Nothing in this subsection shall be construed to require a court to review the results of an investigation completed pursuant to § 16.1-273.

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer.

C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

D. A juvenile sentenced pursuant to clause (i) of subdivision A 1 shall be eligible to earn sentence credits in the manner prescribed by § 53.1-202.2 for the portion of the sentence served as a serious juvenile offender under § 16.1-285.1.

E. If the court sentences the juvenile as a juvenile under this chapter, the clerk shall provide a copy of the court's final order or judgment to the court service unit in the same locality as the juvenile court to which the case had been transferred.

§ 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

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59 curfew violations, the court before final disposition thereof may require an investigation, which (i) shall
60 include a drug screening and (ii) may, and for the purposes of ~~§ 16.1-278.7~~ *subdivision A 14 or A 17 of*
61 *§ 16.1-278.8* shall, include *a social history of* the physical, mental, and social conditions, including an
62 assessment of any affiliation with a criminal street gang as defined in § 18.2-46.1, and personality of the
63 child and the facts and circumstances surrounding the violation of law. However, in the case of a
64 juvenile adjudicated delinquent on the basis of an act committed on or after January 1, 2000, which
65 would be a felony if committed by an adult, or a violation under Article 1 (§ 18.2-247 et seq.) or
66 Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 and such offense would be punishable as a
67 Class 1 or Class 2 misdemeanor if committed by an adult, the court shall order the juvenile to undergo
68 a drug screening. If the drug screening indicates that the juvenile has a substance abuse or dependence
69 problem, an assessment shall be completed by a certified substance abuse counselor as defined in
70 § 54.1-3500 employed by the Department of Juvenile Justice or by a locally operated court services unit
71 or by an individual employed by or currently under contract to such agencies and who is specifically
72 trained to conduct such assessments under the supervision of such counselor.

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

77 **§ 16.1-278.7. Commitment to Department of Juvenile Justice.**

78 Only a juvenile who is adjudicated as a delinquent and is 11 years of age or older may be committed
79 to the Department of Juvenile Justice. ~~Unless previously completed, at the time a court commits a child~~
80 ~~to the Department of Juvenile Justice the court shall order an investigation pursuant to § 16.1-273 to be~~
81 ~~completed within 45 days.~~ No juvenile court or circuit court shall order the commitment of any child
82 jointly to the Department of Juvenile Justice and to a local board of social services or transfer the
83 custody of a child jointly to a court service unit of a juvenile court and to a local board of social
84 services. Any person sentenced and committed to an active term of incarceration in the Department of
85 Corrections who is, at the time of such sentencing, in the custody of the Department of Juvenile Justice,
86 upon pronouncement of sentence, shall be immediately transferred to the Department of Corrections.

87 **§ 16.1-278.8. Delinquent juveniles.**

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

91 1. Enter an order pursuant to the provisions of § 16.1-278;

92 2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the
93 court may order with respect to the juvenile and his parent;

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

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

100 4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a
101 boot camp established pursuant to § 66-13 provided bed space is available for confinement and the
102 juvenile (i) has been found delinquent for an offense that would be a Class 1 misdemeanor or felony if
103 committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or
104 found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not
105 previously been committed to and received by the Department, and (v) has had an assessment completed
106 by the Department or its contractor concerning the appropriateness of the candidate for a boot camp.
107 Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of
108 participation in the program, he shall be brought before the court for a hearing at which the court may
109 impose any other disposition as authorized by this section which could have been imposed at the time
110 the juvenile was placed in the custody of the Department;

111 5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer
112 disposition of the delinquency charge for a specific period of time established by the court with due
113 regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under
114 such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions,
115 the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal
116 under these provisions shall be without adjudication of guilt;

117 6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such
118 programs, cooperate in such treatment or be subject to such conditions and limitations as the court may
119 order and as are designed for the rehabilitation of the juvenile where the court determines this
120 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~~ *Upon consideration of the results of an investigation completed pursuant to § 16.1-273, 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;

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

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

17. ~~Impose~~ *Upon consideration of the results of an investigation completed pursuant to § 16.1-273, 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.

2. That the provisions of the first enactment of this act shall become effective on October 1, 2014.

3. That the Department of Juvenile Justice shall develop a model social history and guidelines for the use of such model to be used by court services units to assist a court to make an informed decision on the disposition of a juvenile under its jurisdiction. Such model and guidelines may include instructions on obtaining individualized educational program assessments and incorporating information about exposure of the juvenile to trauma. The Department shall report its progress to the Virginia Commission on Youth prior to the 2015 Regular Session of the General Assembly.