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HOUSE BILL NO. 488

Offered January 13, 2016

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A BILL to amend and reenact §§ 16.1-278.5, 16.1-291, and 16.1-292 of the Code of Virginia, relating to status offenders; willful and material violation of court order or terms of probation; notice; orders of disposition for violation.

Patrons—McClellan and Aird

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.5, 16.1-291, and 16.1-292 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.5. Children in need of supervision.

A. If a child is found to be in need of supervision, the court shall, before final disposition of the case, 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 appropriate department of social services, community services board, local school division, court service unit and other appropriate and available public and private agencies and may be the family assessment and planning team established pursuant to § 2.2-5207. A report of the evaluation shall be filed as provided in § 16.1-274 A. In lieu of directing an evaluation be made, the court may consider the report concerning the child of an interdisciplinary team which met not more than ninety days prior to the court's making a finding that the child is in need of supervision.

B. The court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter any order of disposition authorized by § 16.1-278.4 for a child found to be in need of services;

2. Place the child on probation under such conditions and limitations as the court may prescribe including suspension of 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;

3. Order the child and/or his parent 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 child;

4. Require the child to participate in a public service project under such conditions as the court may prescribe; or

5. a. Beginning July 1, 1992, in the case of any child subject to compulsory school attendance as provided in § 22.1-254, where the court finds that the child's parent is in violation of §§ 22.1-254, 22.1-255, 22.1-265, or § 22.1-267, in addition to any penalties provided in § 22.1-263 or § 22.1-265, the court may order the parent with whom the child is living 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 child and/or the parent. Upon the failure of the parent to so participate or cooperate, or to comply with the conditions and limitations that the court orders, the court may impose a fine of not more than \$100 for each day in which the person fails to comply with the court order.

b. If the court finds that the parent has willfully disobeyed a lawful process, judgment, decree, or court order requiring such person to comply with the compulsory school attendance law, in addition to any conditions or limitations that the court may order or any penalties provided by §§ 16.1-278.2 through 16.1-278.19, 22.1-263 or § 22.1-265, the court may impose the penalty authorized by § 18.2-371.

C. Any order entered pursuant to this section shall be provided in writing to the child, his parent or legal custodian, and to the child's attorney and shall contain adequate notice of the provisions of § 16.1-292 regarding willful violation of such order *and, if the child is placed on probation, adequate notice of the provisions of § 16.1-291 regarding willful violations of the terms of probation.*

§ 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 §§

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59 16.1-285, 16.1-285.1 or § 16.1-293, may be proceeded against for a revocation or modification of such
60 order or parole status. A proceeding to revoke or modify probation, protective supervision or parole
61 shall be commenced by the filing of a petition. Except as otherwise provided, such petitions shall be
62 screened, reviewed and prepared in the same manner and shall contain the same information as provided
63 in §§ 16.1-260 and 16.1-262. The petition shall recite the date that the juvenile or person was placed on
64 probation, under protective supervision or on parole and shall state the time and manner in which notice
65 of the terms of probation, protective supervision or parole were given.

66 B. If a juvenile or person is found to have violated a prior order of the court or the terms of
67 probation or parole, the court may, in accordance with the provisions of §§ 16.1-278.2 through
68 16.1-278.10, upon a revocation or modification hearing, modify or extend the terms of the order of
69 probation or parole, including termination of probation or parole. However, notwithstanding the
70 contempt power of the court as provided in § 16.1-292, the court shall be limited in the actions it may
71 take to those that the court may have taken at the time of the court's original disposition pursuant to §§
72 16.1-278.2 through 16.1-278.10, except as hereinafter provided.

73 C. In the event that a child in need of supervision is found to have willfully and materially violated
74 an order of the court or the terms of his probation granted pursuant to § 16.1-278.5, in addition to or in
75 lieu of the dispositions specified in that section, the court may enter any of the following orders of
76 disposition:

77 1. Suspend the child's driver's license upon terms and conditions which may include the issuance of a
78 restricted license for those purposes set forth in subsection E of § 18.2-271.1; or

79 2. Order any such child ~~fourteen~~ 14 years of age or older to be (i) placed in a foster home, group
80 home, or other nonsecure residential facility; or, (ii) if the court finds that such placement is not likely
81 to meet the child's needs, that all other treatment options in the community have been exhausted, and
82 that secure placement is necessary in order to meet the child's service needs, detained in a secure facility
83 for a period of time not to exceed ten consecutive days for violation of any order of the court or
84 violation of probation arising out of the same petition. The court shall state in its order for detention the
85 basis for all findings required by this section. When any child is detained in a secure facility pursuant to
86 this section, the court shall direct the agency evaluating the child pursuant to § 16.1-278.5 to reconvene
87 the interdisciplinary team participating in such evaluation, develop further treatment plans as may be
88 appropriate and submit its report to the court of its determination as to further treatment efforts either
89 during or following the period the child is in secure detention. A child may only be detained pursuant to
90 this section in a detention home or other secure facility in compliance with standards established by the
91 State Board. Any order issued pursuant to this subsection is a final order and is appealable as provided
92 by law.

93 D. Nothing in this section shall be construed to reclassify a child in need of supervision as a
94 delinquent.

95 E. If a person adjudicated delinquent and found to have violated an order of the court or the terms of
96 his probation or parole was a juvenile at the time of the original offense and is eighteen years of age or
97 older when the court enters disposition for violation of the order of the court or the terms of his
98 probation or parole, the dispositional alternative specified in § 16.1-284 shall be available to the court.

99 **§ 16.1-292. Violation of court order by any person.**

100 A. Any person violating an order of the juvenile court entered pursuant to §§ 16.1-278.2 through
101 16.1-278.19, including a parent subject to an order issued pursuant to subdivision 3 of § 16.1-278.8, may
102 be proceeded against (i) by an order requiring the person to show cause why the order of the court
103 entered pursuant to §§ 16.1-278.2 through 16.1-278.19 has not been complied with, (ii) for contempt of
104 court pursuant to § 16.1-69.24 or as otherwise provided in this section, or (iii) by both. Except as
105 otherwise expressly provided herein, nothing in this chapter shall deprive the court of its power to
106 punish summarily for contempt for such acts as set forth in § 18.2-456, or to punish for contempt after
107 notice and an opportunity for a hearing on the contempt except that confinement in the case of a
108 juvenile shall be in a secure facility for juveniles rather than in jail and shall not exceed a period of ten
109 days for each offense. However, if the person violating the order was a juvenile at the time of the
110 original act and is eighteen years of age or older when the court enters a disposition for violation of the
111 order, the judge may order confinement in jail.

112 B. Upon conviction of any party for contempt of court in failing or refusing to comply with an order
113 of a juvenile court for spousal support or child support under § 16.1-278.15, the court may commit and
114 sentence such party to confinement in a jail, workhouse, city farm or work squad as provided in
115 §§ 20-61 and 20-62, for a fixed or indeterminate period or until the further order of the court. In no
116 event, however, shall such sentence be imposed for a period of more than twelve months. The sum or
117 sums as provided for in § 20-63 shall be paid as therein set forth, to be used for the support and
118 maintenance of the spouse or the child or children for whose benefit such order or decree provided.

119 C. Notwithstanding the contempt power of the court, the court shall be limited in the actions it may
120 take with respect to a child violating the terms and conditions of an order to those which the court

could 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. However, this limitation shall not be construed to deprive the court of its power to (i) punish a child summarily for contempt for acts set forth in § 18.2-456 or (ii) punish a child for contempt for violation of a dispositional order in a delinquency proceeding after notice and an opportunity for a hearing regarding such contempt, including acts of disobedience of the court's dispositional order which are committed outside the presence of the court.

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

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

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

2. Order any such child ~~fourteen~~ 14 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, detained in a secure facility for a period of time not to exceed ten consecutive days for violation of any order of the court 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 as promptly as possible to review its evaluation; develop further treatment plans as may be appropriate and submit its report to the court for its determination as to further treatment efforts either during or following the period the child is in secure detention. A juvenile 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 to the circuit court as provided by law.

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