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HOUSE BILL NO. 2383

Offered January 9, 2019

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A BILL to amend and reenact §§ 16.1-273 and 16.1-278.8 of the Code of Virginia, relating to juvenile and domestic relations court; social history report; consideration and waiver.

Patron—Carroll Foy

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

§ 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, *or an act that would be a violent felony offense as defined in § 17.1-805 if committed by an adult*, 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 subdivision A 14 or A 17 of § 16.1-278.8 shall, include a social history of 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 *that would be a violent felony offense as defined in § 17.1-805 if committed by an adult*, the court, before final disposition, shall direct that such investigation and social history report be completed and shall consider the results of such report prior to entering a disposition. 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. The court also shall, on motion of the attorney for the Commonwealth with the consent of the victim, or may in its discretion, require the preparation of a victim impact statement in accordance with the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant physical, psychological, or economic injury as a result of the violation of law.

§ 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 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.

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59 Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of
60 participation in the program, he shall be brought before the court for a hearing at which the court may
61 impose any other disposition as authorized by this section which could have been imposed at the time
62 the juvenile was placed in the custody of the Department;

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

69 6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such
70 programs, cooperate in such treatment or be subject to such conditions and limitations as the court may
71 order and as are designed for the rehabilitation of the juvenile where the court determines this
72 participation to be in the best interest of the juvenile and other parties concerned and where the court
73 determines it reasonable to expect the parent to be able to comply with such order;

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

75 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or
76 drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the
77 treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse
78 screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the
79 commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs
80 and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not
81 previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such
82 facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of
83 participation in the program, he shall be brought before the court for a hearing at which the court may
84 impose any other disposition authorized by this section. The court shall review such placements at
85 30-day intervals;

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

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

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

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

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

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

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

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

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

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

120 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. ~~Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon~~ 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. *The investigation authorized pursuant to § 16.1-273 may be waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative for any such juvenile adjudication of a misdemeanor offense or a felony not classified as a violent felony offense pursuant to § 17.1-805;*

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

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

17. ~~Unless waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, upon~~ Upon consideration of the results of an investigation completed pursuant to § 16.1-273, impose the penalty authorized by § 16.1-285.1. *The investigation authorized pursuant to § 16.1-273 may be waived by an agreement between the attorney for the Commonwealth and the juvenile and his attorney or other legal representative, provided that the applicable offense is a misdemeanor or a felony not specified as a violent offense in § 17.1-805;*

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.