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HOUSE BILL NO. 745

Offered January 8, 2020

Prefiled January 6, 2020

A BILL to amend and reenact § 16.1-272 of the Code of Virginia, relating to sentencing of juvenile tried as adult.

Patron—Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-272 of the Code of Virginia is 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. Nothing in this subsection shall be construed to require a court to review the results of an investigation completed pursuant to § 16.1-273.

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. *Notwithstanding any other provision of law, if the juvenile is convicted of any felony and the court finds by clear and convincing evidence that the victim of such felony offense (i) trafficked the juvenile in violation of clause (iii), (iv), or (v) of § 18.2-48 or in violation of § 18.2-348, 18.2-349, 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1 or (ii) sexually assaulted or abused the juvenile in violation of clause (ii) of § 18.2-48 or in violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, or 18.2-67.3, subsection B of § 18.2-361, subsection B of § 18.2-366, or § 18.2-370, 18.2-370.1, 18.2-371, 18.2-374.1, or 18.2-379, within one year prior to the commission of the felony offense, the court may in its discretion (a) depart from any mandatory minimum sentence required by law, (b) suspend any portion of an otherwise applicable sentence, or (c) deal with the juvenile in the same manner as a case in the juvenile court.*

4. 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.

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. *In any case in which a juvenile is not sentenced as a juvenile under this chapter, the court shall, in addition to considering any other factor and prior to imposing a sentence, consider (i) the juvenile's exposure to adverse childhood experiences, early childhood trauma, or any child welfare agency and (ii) the differences between juvenile and adult offenders, including the diminished culpability of juveniles.*

INTRODUCED

HB745

59 *Notwithstanding any other provision of law, the court may reduce or suspend any mandatory minimum*
60 *sentence or maximum period of incarceration prescribed by law that the juvenile is required to serve by*
61 *not more than 50 percent if the court determines that such reduction is appropriate in relation to the*
62 *juvenile's age, the juvenile's prospects for rehabilitation, or any other mitigating factors.*

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

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