

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 16.1-285.1 and 16.1-285.2 of the Code of Virginia, relating to*
3 *juveniles; release and review hearing for serious offender; plea agreement.*

4 [H 1991]
5 Approved

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

7 **1. That §§ 16.1-285.1 and 16.1-285.2 of the Code of Virginia are amended and reenacted as**
8 **follows:**

9 **§ 16.1-285.1. Commitment of serious offenders.**

10 A. In the case of a juvenile fourteen years of age or older who has been found guilty of an offense
11 which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense
12 which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an
13 offense which would be a felony if committed by an adult within the immediately preceding twelve
14 months, (iii) the felony offense is punishable by a term of confinement of greater than twenty years if
15 the felony was committed by an adult, or (iv) the juvenile has been previously adjudicated delinquent
16 for an offense which if committed by an adult would be a felony punishable by a term of confinement
17 of twenty years or more, and the circuit court, or the juvenile or family court, as the case may be, finds
18 that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and
19 would serve the best interests of the community, then the court may order the juvenile committed to the
20 Department of Juvenile Justice for placement in a juvenile correctional center for the period of time
21 prescribed pursuant to this section.

22 Alternatively, in order to determine if a juvenile, transferred from a juvenile and domestic relations
23 district court to a circuit court pursuant to § 16.1-269.1, appropriately qualifies for commitment pursuant
24 to this section, notwithstanding the inapplicability of the qualification criteria set forth in clauses (i)
25 through (iv), the circuit court may consider the commitment criteria set forth in subdivisions 1, 2, and 3
26 of subsection B as well as other components of the juvenile's life history and, if upon such consideration
27 in the opinion of the court the needs of the juvenile and the interests of the community would clearly
28 best be served by commitment hereunder, may so commit the juvenile.

29 B. Prior to committing any juvenile pursuant to this section, the court shall consider:

30 1. The juvenile's age;

31 2. The seriousness and number of the present offenses, including (i) whether the offense was
32 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the offense was
33 against persons or property, with greater weight being given to offenses against persons, especially if
34 death or injury resulted; (iii) whether the offense involved the use of a firearm or other dangerous
35 weapon by brandishing, displaying, threatening with or otherwise employing such weapon; and (iv) the
36 nature of the juvenile's participation in the alleged offense;

37 3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the
38 number and nature of previous contacts with courts, (ii) the number and nature of prior periods of
39 probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the
40 number and nature of previous residential and community-based treatments, (v) whether previous
41 adjudications and commitments were for delinquent acts that involved the infliction of serious bodily
42 injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated offenses; and

43 4. The Department's estimated length of stay.

44 Such commitment order must be supported by a determination that the interests of the juvenile and
45 community require that the juvenile be placed under legal restraint or discipline and that the juvenile is
46 not a proper person to receive treatment or rehabilitation through other juvenile programs or facilities.

47 C. In ordering commitment pursuant to this section, the court shall specify a period of commitment
48 not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first. The court
49 may also order a period of determinate or indeterminate parole supervision to follow the commitment
50 but the total period of commitment and parole supervision shall not exceed seven years or the juvenile's
51 twenty-first birthday, whichever occurs first.

52 D. Upon receipt of a juvenile committed under the provisions of this section, the Department shall
53 evaluate the juvenile for the purpose of considering placement of the juvenile in an appropriate juvenile
54 correctional center for the time prescribed by the committing court. Such a placement decision shall be
55 made based on the availability of treatment programs at the facility; the level of security at the facility;
56 the offense for which the juvenile has been committed; and the welfare, age and gender of the juvenile.

57 E. The court which commits the juvenile to the Department under this section shall have continuing
58 jurisdiction over the juvenile throughout his commitment. The continuing jurisdiction of the court shall
59 not prevent the Department from removing the juvenile from a juvenile correctional center without prior
60 court approval for the sole purposes of routine or emergency medical treatment, routine educational
61 services, or family emergencies.

62 F. Any juvenile committed under the provisions of this section shall not be released at a time earlier
63 than that specified by the court in its dispositional order except as provided for in § 16.1-285.2. The
64 Department may petition the committing court, *notwithstanding the terms of any plea agreement or*
65 *commitment order*, for a hearing as provided for in § 16.1-285.2 for an earlier release of the juvenile
66 when good cause exists for an earlier release. In addition, *notwithstanding the terms of any plea*
67 *agreement or commitment order*, the Department shall petition the committing court for a determination
68 as to the continued commitment of each juvenile sentenced under this section at least sixty days prior to
69 the second anniversary of the juvenile's date of commitment and sixty days prior to each annual
70 anniversary thereafter.

71 **§ 16.1-285.2. Release and review hearing for serious offender.**

72 A. Upon receipt of a petition of the Department of Juvenile Justice for a hearing concerning a
73 juvenile committed under § 16.1-285.1, the court shall schedule a hearing within thirty days and shall
74 appoint counsel for the juvenile pursuant to § 16.1-266. The court shall provide a copy of the petition,
75 the progress report required by this section, and notice of the time and place of the hearing to (i) the
76 juvenile, (ii) the juvenile's parent, legal guardian, or person standing in loco parentis, (iii) the juvenile's
77 guardian ad litem, if any, (iv) the juvenile's legal counsel, and (v) the attorney for the Commonwealth
78 who prosecuted the juvenile during the delinquency proceeding. The attorney for the Commonwealth
79 shall provide notice of the time and place of the hearing by first-class mail to the last known address of
80 any victim of the offense for which the juvenile was committed if such victim has submitted a written
81 request for notification to the attorney for the Commonwealth.

82 B. The petition shall be filed in the committing court and shall be accompanied by a progress report
83 from the Department. This report shall describe (i) the facility and living arrangement provided for the
84 juvenile by the Department, (ii) the services and treatment programs afforded the juvenile, (iii) the
85 juvenile's progress toward treatment goals and objectives, which shall include a summary of his
86 educational progress, (iv) the juvenile's potential for danger to either himself or the community, and (v)
87 a comprehensive aftercare plan for the juvenile.

88 B1. The appearance of the juvenile before the court may be by (i) personal appearance before the
89 judge, or (ii) use of two-way electronic video and audio communication. If two-way electronic video
90 and audio communication is used, a judge may exercise all powers conferred by law and all
91 communications and proceedings shall be conducted in the same manner as if the appearance were in
92 person, and any documents filed may be transmitted by facsimile process. A facsimile may be served or
93 executed by the officer or person to whom sent, and returned in the same manner, and with the same
94 force, effect, authority, and liability as an original document. All signatures thereon shall be treated as
95 original signatures. Any two-way electronic video and audio communication system used for an
96 appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

97 C. At the hearing the court shall consider the progress report. The court may also consider additional
98 evidence from (i) probation officers, the juvenile correctional center, treatment professionals, and the
99 court service unit; (ii) the juvenile, his legal counsel, parent, guardian or family member; or (iii) other
100 sources the court deems relevant. The hearing and all records relating thereto shall be governed by the
101 confidentiality provisions of Article 12 (§ 16.1-299 et seq.) of this chapter.

102 D. At the conclusion of the hearing *and notwithstanding the terms of any plea agreement or*
103 *commitment order*, the court shall order (i) continued commitment of the juvenile to the Department for
104 completion of the original determinate period of commitment or such lesser time as the court may order
105 or (ii) release of the juvenile under such terms and conditions as the court may prescribe. In making a
106 determination under this section, the court shall consider (i) the experiences and character of the juvenile
107 before and after commitment, (ii) the nature of the offenses that the juvenile was found to have
108 committed, (iii) the manner in which the offenses were committed, (iv) the protection of the community,
109 (v) the recommendations of the Department, and (vi) any other factors the court deems relevant. The
110 order of the court shall be final and not subject to appeal.

111 E. In the case of a juvenile convicted as an adult and committed as a serious offender under
112 subdivision A 1 of § 16.1-272, at the conclusion of the review hearing *and notwithstanding the terms of*
113 *any plea agreement or commitment order*, the circuit court shall order (i) the juvenile to begin serving
114 any adult sentence in whole or in part that may include any remaining part of the original determinate
115 period of commitment, or (ii) the suspension of the unserved portion of the adult sentence in whole or
116 in part based upon the juvenile's successful completion of the commitment as a serious offender, or (iii)
117 the continued commitment of the juvenile to the Department for completion of the original determinate

118 period of commitment or such lesser time as the court may order, or (iv) the release of the juvenile
119 under such terms and conditions as the court may prescribe.

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