

LD6338386

## HOUSE BILL NO. 2519

Offered January 23, 1995

*A BILL to amend and reenact § 16.1-278.8 of the Code of Virginia, as it is currently effective and as it may become effective, relating to juvenile delinquents; disposition; restitution.*

Patrons—O'Brien, Albo, Cantor, Cox, McDonnell, Mims, Newman, Reynolds, Rollison, Sherwood and Wagner; Senators: Barry and Benedetti

Referred to Committee for Courts of Justice

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

**1. That § 16.1-278.8 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:**

§ 16.1-278.8. Delinquent juveniles.

If a juvenile is found to be delinquent, except where such finding involves a refusal to take a blood or 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 period of time not to exceed twelve months, 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;

5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer disposition of the delinquency charge for a period not to exceed twelve months and place the juvenile on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside 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 where the court determines this 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;

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 which 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

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60 driver's license until such time as is stipulated in the court order or until notification by the court of  
61 withdrawal of the order imposing the curfew;

62 10. Require the *juvenile, the juvenile's parents or either of them or both the juvenile and his parents*  
63 to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by  
64 the offense for which the juvenile was found to be delinquent *provided the amount of restitution ordered*  
65 *to be paid by a parent or the parents shall not exceed \$1,500. Payment of restitution or reparation by a*  
66 *parent pursuant to an order entered under this subdivision shall not be a bar to recovery in an action*  
67 *brought under to § 8.01-43 or § 8.01-44;*

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

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

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

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

76 b. A child welfare agency, private organization or facility which is licensed or otherwise authorized  
77 by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a  
78 delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the  
79 approval of the Director; or

80 c. The local board of public welfare or social services of the county or city in which the court has  
81 jurisdiction or, at the discretion of the court, to the local board of the county or city in which the  
82 juvenile has residence if other than the county or city in which the court has jurisdiction. The board  
83 shall accept the juvenile for care and custody, provided that it has been given reasonable notice of the  
84 pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in  
85 which the court has jurisdiction, such local board may be required to temporarily accept a juvenile for a  
86 period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge  
87 entering the placement order describes the emergency and the need for such temporary placement in the  
88 order. Nothing in this subdivision shall prohibit the commitment of a juvenile to any local board of  
89 public welfare or social services in the Commonwealth when such local board consents to the  
90 commitment. The board to which the juvenile is committed shall have the final authority to determine  
91 the appropriate placement for the juvenile. Any order authorizing removal from the home and  
92 transferring legal custody of a juvenile to a local board of public welfare or social services as provided  
93 in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been  
94 made to prevent removal and that continued placement in the home would be contrary to the welfare of  
95 the juvenile, and the order shall so state;

96 14. Commit the juvenile to the Department of Youth and Family Services, but only if he is older  
97 than ten years of age and the current offense is (i) an offense which would be a felony if committed by  
98 an adult or (ii) an offense which would be a Class 1 misdemeanor if committed by an adult and the  
99 juvenile has previously been found to be delinquent based on an offense which would be either a felony  
100 or Class 1 misdemeanor if committed by an adult;

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

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

103 17. Impose the penalty authorized by § 16.1-285.1; or

104 18. Impose the penalty authorized by § 16.1-278.9.

105 § 16.1-278.8. (Delayed effective date) Delinquent juveniles.

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

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

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

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

115 4. Defer disposition for a period of time not to exceed twelve months, after which time the charge  
116 may be dismissed by the judge if the juvenile exhibits good behavior during the period for which  
117 disposition is deferred;

118 5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer  
119 disposition of the delinquency charge for a period not to exceed twelve months and place the juvenile  
120 on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the  
121 terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him.

Discharge and dismissal under these provisions shall be without adjudication of guilt;

6. Order the parent of a juvenile with whom the juvenile does not reside 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 where the court determines this 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;

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 which 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, *the juvenile's parents or either of them or both the juvenile and his parents* 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 *provided the amount of restitution ordered to be paid by a parent or the parents shall not exceed \$1,500. Payment of restitution or reparation by a parent pursuant to an order entered under this subdivision shall not be a bar to recovery in an action brought under to § 8.01-43 or § 8.01-44;*

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 which 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 which 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 public welfare or 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 fourteen 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 public welfare or 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 public welfare or 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 the juvenile to the Department of Youth and Family Services, but only if he is older than ten years of age and the current offense is (i) an offense which would be a felony if committed by an adult or (ii) an offense which 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 which would be either a felony or Class 1 misdemeanor if committed by an adult;

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

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

17. Impose the penalty authorized by § 16.1-285.1; or

18. Impose the penalty authorized by § 16.1-278.9.