

LD8550633

**HOUSE BILL NO. 2546**

Offered January 23, 1995

*A BILL to amend and reenact §§ 16.1-249, 16.1-278.8, as it is currently effective and as it may become effective, and 16.1-284.1 of the Code of Virginia, relating to delinquent juveniles; restitution; secure detention.*

Patrons—Dillard, Brickley, Fisher, Griffith, Hamilton, Hargrove, Katzen, McClure, McDonnell, Morgan, Newman, O'Brien, Parrish, Rhodes, Sherwood, Wardrup, Way and Wilkins

Referred to Committee for Courts of Justice

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

**1. That § 16.1-249, 16.1-278.8, as it is currently effective and as it may become effective, and 16.1-284.1 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-249. Places of confinement for juveniles.

A. If it is ordered that a juvenile remain in detention or shelter care pursuant to § 16.1-248.1, such juvenile may be detained, pending a court hearing, in the following places:

1. An approved foster home or a home otherwise authorized by law to provide such care;
2. A facility operated by a licensed child welfare agency;

3. If a juvenile is alleged to be delinquent, in a detention home or group home approved by the Department;

4. Any other suitable place designated by the court and approved by the Department.

B. No juvenile shall be detained or confined in any jail or other facility for the detention of adult offenders or persons charged with crime except as provided in subsection D, E, F or G of this section.

C. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a juvenile who is or appears to be under the age of eighteen years is received at the facility, and shall deliver him to the court upon request, or transfer him to a detention facility designated by the court.

D. When a case is transferred to the circuit court in accordance with the provisions of § 16.1-269.1 and an order is entered by the circuit court in accordance with § 16.1-269.6, or in accordance with the provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the district court, the juvenile, if in confinement, may be transferred to a jail or other facility for the detention of adults and need no longer be entirely separate and removed from adults.

E. If, in the judgment of the custodian, a juvenile fourteen years of age or older has demonstrated that he is a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the judge shall determine whether such juvenile should be transferred to another juvenile facility including a jail or other place of detention for adults; provided, that (i) the detention is in a room or ward entirely separate and removed from adults, (ii) adequate supervision is provided, and (iii) the facility is approved by the State Board of Youth and Family Services for detention of juveniles.

F. If, in the judgment of the custodian, it has been demonstrated that the presence of a juvenile fourteen years of age or older in a facility creates a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the custodian may transfer the juvenile to another juvenile facility, or a jail or other place of detention for adults pursuant to the limitations of subdivisions E (i), (ii) and (iii) for a period not to exceed six hours.

G. If a juvenile fourteen years of age or older is charged with an offense which, if committed by an adult, would be a felony or Class 1 misdemeanor, and the judge or intake officer determines that secure detention is needed for the safety of the juvenile or the community, such juvenile may be detained for a period no longer than ~~six~~ eight hours in a court holding cell incident to a court hearing, or in a temporary lock-up room or ward for juveniles while arrangements are completed to transfer the juvenile to a juvenile facility. Such room, ward or cell may be located in a building which also contains a jail or other facility for the detention of adults, provided (i) such room, ward or cell is totally separate and removed from adults or juveniles transferred to the circuit court pursuant to § Article 7 (§ 16.1-269.1 et seq.) of this chapter, (ii) constant supervision is provided, and (iii) the facility is approved by the ~~State Board~~ Department of Corrections for the detention of juveniles. The ~~State Board~~ Department of Corrections is authorized and directed to prescribe minimum standards for temporary lock-up rooms, wards and court holding cells based on the requirements set out in this subsection. The Department shall assist the localities or combinations thereof in implementing this section and ensuring compliance herewith.

H. A judge may order the predispositional detention of persons eighteen years of age or older in an

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adult facility, or in a juvenile facility only for a violation of the terms and conditions of release from a learning center.

§ 16.1-278.8. (For effective date - See note) 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 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 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. *The court may also order a parent or the parents of the juvenile to pay restitution and may order judgment against the parent or parents in an amount not to exceed \$1,500 for each delinquent act. An abstract of the judgment shall be delivered to the clerk of the general district court of the same judicial district. The clerk of the general district court shall issue executions upon the judgment;*

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.

§ 16.1-278.8. (Delayed effective date - See notes) 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 family 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 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 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. *The court may also order a parent or the parents of the juvenile to pay restitution and may order judgment against the parent or parents in an amount not to exceed \$1,500 for each delinquent act. An abstract of the judgment shall be delivered to the clerk of the general district court of the same judicial district. The clerk of the general district court shall issue executions upon the judgment;*

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.

§ 16.1-284.1. Placement in secure local facility.

245 A. If a child ~~sixteen~~ *fourteen* years of age or older is found to have committed an offense which if  
246 committed by an adult would be punishable by confinement in a state or local correctional facility as  
247 defined in § 53.1-1, and the court determines (i) after receipt of a social history compiled pursuant to  
248 § 16.1-273 that the child has not previously been found guilty of a delinquent act within the preceding  
249 twelve months, (ii) that the interests of the child and the community require that the child be placed  
250 under legal restraint or discipline, and (iii) that other placements authorized by this title will not serve  
251 the best interests of the child, then the court may order the child confined in a detention home or other  
252 secure facility for juveniles for a period not to exceed thirty calendar days from the date the order is  
253 entered, inclusive of time served in a detention home or other secure facility, for a single offense or  
254 multiple offenses.

255 B. If a child ~~sixteen~~ *fourteen* years of age or older is found to have committed an offense which if  
256 committed by an adult would be punishable by confinement in a state or local correctional facility as  
257 defined in § 53.1-1, and the court determines (i) after receipt of a social history compiled within the  
258 immediately preceding twelve months pursuant to § 16.1-273 that the child has been adjudged a  
259 delinquent within the immediately preceding twelve months and has failed to respond to past treatment  
260 efforts, (ii) that the child is amenable to continued treatment efforts in the community, and (iii) the  
261 interests of the community and the child require that the child be placed under legal restraint or  
262 discipline, based on the nature of the present offense, the nature of the child's prior delinquency record,  
263 and the nature of the past treatment efforts, then the court may order the child committed to the  
264 Department, but suspend such commitment and order the child confined in a detention home or other  
265 secure facility for juveniles for a period not to exceed six months, inclusive of time served in detention  
266 while awaiting disposition, for a single offense or for multiple offenses. In suspending the commitment  
267 to the Department as provided for in this subsection, the court shall specify conditions for the child's  
268 participation in one or more community treatment programs as may be appropriate for the child's  
269 rehabilitation.

270 C. During any period of confinement ordered pursuant to this section, the court shall conduct a  
271 mandatory review hearing at least once during each thirty days of the period of confinement and at such  
272 other times upon the request of the child's probation officer, for good cause shown. If it appears at such  
273 hearing that the purpose of the order of confinement has been achieved, the child shall be released on  
274 probation for such period and under such conditions as the court may specify and remain subject to the  
275 order suspending commitment to the State Department of Youth and Family Services. If the court  
276 determines at the first or any subsequent review hearing that the child is consistently failing to comply  
277 with the conditions specified by the court or the policies and program requirements of the facility, then  
278 the court shall order that the child either be (i) released under such conditions as the court may specify  
279 subject to the suspended commitment, or (ii) committed to the State Department of Youth and Family  
280 Services pursuant to § 16.1-291. If the court determines at the first or any subsequent review hearing  
281 that the child is not actively involved in any community treatment program through no fault of his own,  
282 then the court shall order that the child be released under such conditions as the court may specify  
283 subject to the suspended commitment.

284 D. A child may only be ordered confined pursuant to this section to a facility in compliance with  
285 standards established by the State Board for such placements; standards for these facilities shall have  
286 regard for reasonable utilization of these facilities and the requirements of § 16.1-310, consistent with  
287 the intent of this section.

288 E. The Department of Youth and Family Services shall assist the localities or combinations thereof in  
289 implementing this section consistent with the statewide plan required by § 16.1-310 and pursuant to  
290 standards promulgated by the State Board, in order to ensure the availability and reasonable access of  
291 each court to the facilities the use of which is authorized by this.