

LD4967836

SENATE BILL NO. 1113

Offered January 23, 1995

A BILL to amend and reenact §§ 2.1-752, 15.1-50.5, 16.1-233, as it is effective and as it may become effective, 16.1-284.1, 16.1-286, 16.1-318, and 16.1-322.5 of the Code of Virginia, relating to implementation of the Virginia Juvenile Community Crime Control Act.

Patrons—Earley, Calhoun, Gartlan, Holland, C.A., Holland, E.M., Houck, Nolen, Reasor, Schewel and Stosch; Delegates: Bloxom, Cantor, Christian, Cunningham, Jackson, Jones, J.C. and Mims

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-752, 15.1-50.5, 16.1-233, as it is effective and as it may become effective, 16.1-284.1, 16.1-286, 16.1-318, and 16.1-322.5 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-752. Community policy and management teams; powers and duties.

The community policy and management team shall manage the cooperative effort in each community to better serve the needs of troubled and at-risk youths and their families and to maximize the use of state and community resources. Every such team shall:

1. Develop interagency policies and procedures to govern the provision of services to children and families in its community;

2. Develop interagency fiscal policies governing access to the state pool of funds by the eligible populations including immediate access to funds for emergency services and shelter care;

3. Coordinate long-range, community-wide planning which ensures the development of resources and services needed by children and families in its community;

4. Establish policies governing referrals and reviews of children and families to the family assessment and planning teams and a process to review the teams' recommendations and requests for funding;

5. Establish quality assurance and accountability procedures for program utilization and funds management;

6. Establish procedures for obtaining bids on the development of new services;

7. Manage funds in the interagency budget allocated to the community from the state pool of funds, the trust fund, and any other source;

8. Authorize and monitor the expenditure of funds by each family assessment and planning team;

9. Have authority to submit grant proposals which benefit its community to the state trust fund and to enter into contracts for the provision or operation of services upon approval of the participating governing bodies; and

10. Serve as its community's liaison to the state management team, reporting on its programmatic and fiscal operations and on its recommendations for improving the service system, including consideration of realignment of geographical boundaries for providing human services; and

11. Have the power to administer funds pursuant to § 16.1-309.3.

§ 15.1-50.5. Members of governing body not to be elected or appointed by governing body to certain offices.

A. Pursuant to Article VII, Section 6 of the Constitution of Virginia, no member of a governing body of a county, city or town shall be eligible, during the term of office for which he was elected or appointed, to hold any office filled by the governing body by election or appointment, except that a member of a governing body may be named a member of such other boards, commissions, and bodies as may be permitted by general law and except that a member of a governing body may be named to fill a vacancy in the office of mayor or board chairman if permitted by general or special law.

B. Pursuant to Article VII, Section 6 of the Constitution of Virginia, and without limiting any other provision of general law, a governing body member may be named by the governing body to one or more of the following positions:

1. Director of emergency services pursuant to § 44-146.19;

2. Member of a planning district commission pursuant to § 15.1-1403;

3. Member of a transportation district commission pursuant to § 15.1-1348;

4. Member of a district home board pursuant to Article 2 (§ 63.1-183 et seq.) of Chapter 9 of Title 63.1;

5. Member of a hospital or health center commission pursuant to Chapter 37 (§ 15.1-1514 et seq.) of Title 15.1;

6. Member of a community services board pursuant to Chapter 10 (§ 37.1-194 et seq.) of Title 37.1;

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60 7. Member of a park authority pursuant to Chapter 27 (§ 15.1-1228 et seq.) of Title 15.1;
61 8. Member of a detention or other residential care facilities commission pursuant to Article 43
62 (~~§ 16.1-310 et seq.~~) *12.1 (§ 16.1-309.2 et seq.)* of Chapter 11 in Title 16.1;
63 9. Member of a board of directors, governing board or advisory council of an area agency on aging
64 pursuant to § 2.1-373;
65 10. Member of a regional jail or jail farm board, pursuant to § 53.1-106 or of a regional jail
66 authority or jail authority pursuant to Article 3.1 (§ 53.1-95.2 et seq.) of Chapter 3 of Title 53.1;
67 11. With respect to members of the governing body of a town under 3,500 population, member of an
68 industrial development authority's board of directors pursuant to Chapter 33 (§ 15.1-1373 et seq.) of
69 Title 15.1;
70 12. Member of a disability services board pursuant to Chapter 10 (§ 51.5-47 et seq.) of Title 51.5;
71 and
72 13. Member of the board of directors, governing board, or advisory council or committee of an
73 airport commission or authority.
74 C. If any governing body member is appointed or elected by the governing body to any office, his
75 qualification in that office shall be void except as provided in subsection B or by other general law.
76 D. Except as specifically provided in general or special law, no appointed body listed in subsection
77 B shall be comprised of a majority of elected officials as members, nor shall any county, city, or town
78 be represented on such appointed body by more than one elected official.
79 E. For the purposes of this section, "governing body" includes the mayor of a municipality and the
80 county board chairman.
81 § 16.1-233. Department to develop court services; court services units; appointment and removal of
82 employees; salaries.
83 A. Within funds appropriated for the purpose, it shall be a function of the Department to develop and
84 operate, except as hereinafter provided, probation and other court services for juvenile and domestic
85 relations district courts in order that all children coming within the jurisdiction of such courts throughout
86 the Commonwealth shall receive the fullest protection of the court. To this end the Director is
87 empowered to establish court services units in his department. The Director shall appoint such
88 employees as he may find to be necessary to carry out properly the responsibilities of the Department
89 relative to the development, supervision and operation of probation and other court services throughout
90 the Commonwealth as set forth in this chapter.
91 B. The salaries of the persons employed pursuant to this section; ~~except as otherwise provided in~~
92 ~~§ 16.1-311 as it pertains to employees of juvenile detention homes and probation houses;~~ shall be paid
93 out of funds appropriated for such purpose to the Department of Youth and Family Services. The
94 Director and such employees as he may find necessary to carry out properly the responsibilities of the
95 Department pursuant to subsection A of this section shall have access to all probation offices, other
96 social services and to their records.
97 C. The State Board shall establish minimum standards for court service staffs and related supportive
98 personnel and promulgate regulations pertaining to their appointment and function to the end that
99 uniform services, insofar as is practical, will be available to juvenile and domestic relations district
100 courts throughout the Commonwealth. In counties or cities now served by regional juvenile and
101 domestic relations courts or where specialized court service units are not provided, and in any county or
102 city which provided specialized services on June 30, 1973, that requests the development of a court
103 service unit, appointment to positions in such units shall be based on merit as provided in Chapter 10
104 (§ 2.1-110 et seq.) of Title 2.1.
105 D. No person shall be assigned to or discharged from the state-operated court service staff of a
106 juvenile and domestic relations district court except as provided in Chapter 10 of Title 2.1, nor without
107 the prior mutual approval of the judge thereof and the Director. However, the chief judge of any such
108 court shall be empowered, for good cause, after due notice and opportunity to be heard, to order the
109 transfer of any person from the court service staff of his court, and the Director shall likewise be
110 empowered to order such transfer or separation subject only to the limitations of Chapter 10 of Title 2.1.
111 § 16.1-233 (Delayed effective date). Department to develop court services; court services units;
112 appointment and removal of employees; salaries.
113 A. Within funds appropriated for the purpose, it shall be a function of the Department to develop and
114 operate, except as hereinafter provided, probation and other court services for family courts in order that
115 all children coming within the jurisdiction of such courts throughout the Commonwealth shall receive
116 the fullest protection of the court. To this end the Director is empowered to establish court services units
117 in his department. The Director shall appoint such employees as he may find to be necessary to carry
118 out properly the responsibilities of the Department relative to the development, supervision and operation
119 of probation and other court services throughout the Commonwealth as set forth in this chapter.
120 B. The salaries of the persons employed pursuant to this section; ~~except as otherwise provided in~~
121 ~~§ 16.1-311 as it pertains to employees of juvenile detention homes and probation houses;~~ shall be paid

out of funds appropriated for such purpose to the Department of Youth and Family Services. The Director and such employees as he may find necessary to carry out properly the responsibilities of the Department pursuant to subsection A of this section shall have access to all probation offices, other social services and to their records.

C. The State Board shall establish minimum standards for court service staffs and related supportive personnel and promulgate regulations pertaining to their appointment and function to the end that uniform services, insofar as is practical, will be available to family courts throughout the Commonwealth. In counties or cities previously served by regional juvenile and domestic relations courts or where specialized court service units are not provided, and in any county or city which provided specialized services on June 30, 1973, that requests the development of a court service unit, appointment to positions in such units shall be based on merit as provided in Chapter 10 (§ 2.1-110 et seq.) of Title 2.1.

D. No person shall be assigned to or discharged from the state-operated court service staff of a family court except as provided in Chapter 10 of Title 2.1, nor without the prior mutual approval of the judge thereof and the Director. However, the chief judge of any such court shall be empowered, for good cause, after due notice and opportunity to be heard, to order the transfer of any person from the court service staff of his court, and the Director shall likewise be empowered to order such transfer or separation subject only to the limitations of Chapter 10 of Title 2.1.

§ 16.1-284.1. Placement in secure local facility.

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

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

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

D. A child may only be ordered confined pursuant to this section to a facility in compliance with standards established by the State Board for such placements; standards for these facilities shall have regard for reasonable utilization of these facilities and the requirements of § ~~16.1-310~~ 16.1-309.4, consistent with the intent of this section.

E. The Department of Youth and Family Services shall assist the localities or combinations thereof in implementing this section consistent with the statewide plan required by § ~~16.1-310~~ 16.1-309.4 and pursuant to standards promulgated by the State Board, in order to ensure the availability and reasonable access of each court to the facilities the use of which is authorized by this section.

§ 16.1-286. Cost of maintenance; approval of placement; semiannual review; roster of placed children.

A. When the court determines that the behavior of a child within its jurisdiction is such that it cannot be dealt with in the child's own locality or with the resources of his locality, the judge shall refer the child to the locality's family assessment and planning team for assessment and a recommendation for services. Based on this recommendation, the court may take custody and place the child, pursuant to the provisions of subdivision 5 b of § 16.1-278.4 or 13 b of § 16.1-278.8 in a private or locally operated public facility, or nonresidential program, excluding those *programs and* facilities operating under the provisions of §§ ~~16.1-313 and 16.1-322.1~~ § 16.1-309.5, and approved by the State Board of Youth and Family Services. No child shall be placed outside the Commonwealth by a court without first complying with the appropriate provisions of Chapter 10.1 (§ 63.1-219.1 et seq.) of Title 63.1 or with regulations of the State Board of Social Services relating to resident children placed out of the Commonwealth.

The Board shall establish a per diem allowance to cover the cost of such placements. This allowance may be drawn from funds allocated through the state pool of funds to the community policy and management team of the locality where the child resides as such residence is determined by the court. The cost, however, shall not exceed that amount which would be incurred if the services required by the child were provided in a juvenile facility operated by the Department of Youth and Family Services. However, when the court determines after an investigation and a hearing that the child's parent or other person legally obligated to provide support is financially able to contribute to support of the child, the court may order that the parent or other legally obligated person pay, in such manner as the court may direct, reasonable sums commensurate with the ability to pay toward the support and treatment of the child placed in a program pursuant to this section. If the parent or other obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt. Alternatively, the court, after reasonable notice to the obligor, may enter an order adjudicating that the obligor is delinquent and such order shall have the effect of a civil judgment when duly docketed in the manner prescribed for the docketing of other judgments for money provided.

B. The court service unit of the locality which made the placement shall be responsible for monitoring and supervising all children placed pursuant to this section. The court shall receive and review, at least semiannually, recommendations concerning the continued care of each child in such placements.

C. The Director shall cause a current roster to be maintained concerning the whereabouts of all children placed pursuant to this section.

§ 16.1-318. Powers of commission generally; supervision by Director of Department of Youth and Family Services.

Each commission created hereunder shall have all powers necessary or convenient for carrying out the general purposes of this article, including the following powers in addition to others herein granted, and subject to such supervision by the Director of the Department of Youth and Family Services as is provided in §§ ~~16.1-310 through 16.1-312~~ 16.1-309.4, 16.1-309.9, and 16.1-309.10 of this law:

A. In general. - To adopt a seal and alter the same at pleasure; to have perpetual succession; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

B. Officers, agents and employees. - To employ such technical experts, and such other officers, agents and employees as it may require, to fix their qualifications, duties and compensation and to remove such employees at pleasure.

C. Acquisition of property. - To acquire within the territorial limits of the political subdivisions for which it is formed, by purchase, lease, gift, or exercise of the right of eminent domain, subject to conditions hereinafter set forth, whatever lands, buildings and structures may be reasonably necessary for the purpose of establishing, constructing, enlarging, maintaining and operating one or more juvenile detention homes or facilities for the reception of juveniles committed thereto under the provisions of this chapter; however, such lands, buildings and structures may be acquired by purchase, lease or gift, although not within the territorial limits, if the location thereof is feasible and practicable with relation to the several political subdivisions for which such commission is formed. Such location shall be approved by resolution of the governing bodies of the participating political subdivisions and of the governing body of the political subdivision in which such lands, buildings and structures are to be located, and the consent in writing of the Director of the Department is given thereto.

D. Construction. - To acquire, establish, construct, enlarge, improve, maintain, equip and operate any juvenile detention home or facility.

E. Rules and regulations for management. - To make and enforce rules and regulations for the management and conduct of its business and affairs and for the use, maintenance and operation of its

facilities and properties.

F. Acceptance of donations. - To accept gifts and grants from the Commonwealth or any political subdivision thereof, and from the United States and any of its agencies; and to accept donations of money, personal property or real estate, and take title thereto from any person, firm, corporation or association.

G. Regulations as to juveniles under care. - To make regulations and policies governing the care, guidance and training of juveniles in such detention facilities.

H. Borrowing. - To borrow money for any of its corporate purposes and to execute evidences of such indebtedness and to secure the same and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of the same and for the rights of the holders thereof. Any city or county participating in the commission may lend, advance or give money or materials or property of any kind to the commission.

I. Issuance of revenue bonds. - To issue revenue bonds in accordance with, and subject to the terms and conditions of § 53.1-95.10, in the same manner in which jail authorities are authorized to issue such bonds.

Bonds issued under the provisions of this section shall not be deemed to constitute a pledge of the faith and credit of the Commonwealth or of any political subdivision thereof. All such bonds shall contain a statement on their face substantially to the effect that neither the faith and credit of the Commonwealth nor the faith and credit of any county, city, town, or other subdivision of the Commonwealth is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under the provisions of this section shall not directly, indirectly or contingently obligate the Commonwealth or any county, city, town, or other subdivision of the Commonwealth to levy any taxes whatever therefor or to make any appropriation for their payment except from the funds pledged under the provisions of this section.

§ 16.1-322.5. State Board may authorize private construction, operation, etc., of local or regional detention homes, etc.

A. The State Board of Youth and Family Services may authorize a county or city or any combination of counties, cities, or towns established pursuant to § 16.1-315 to contract with a private entity for the financing, site selection, acquisition, construction, maintenance, leasing, management or operation of a local or regional detention home or other secure facility, or any combination of those services. Any project authorized pursuant to this article shall be consistent with the statewide plan developed pursuant to § ~~16.1-310~~16.1-309.4.

B. Any project the State Board authorizes pursuant to subsection A of this section shall be subject to the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.) and subject to the requirements and limitations set out below.

1. Contracts entered into under the terms of this article shall be with an entity submitting an acceptable response pursuant to a request for proposals. An acceptable response shall be one which meets all the requirements in the request for proposals. However, no such contract may be entered into unless the private contractor demonstrates that it has:

a. The qualifications, experience and management personnel necessary to carry out the terms of this contract;

b. The financial resources to provide indemnification for liability arising from detention home or other secure facility management projects;

c. Evidence of past performance of similar contracts; and

d. The ability to comply with all applicable federal and state constitutional standards; federal, state, and local laws; court orders; and standards for a detention home or other secure facility.

2. Contracts awarded under the provisions of this article, including contracts for the provision of juvenile correctional facilities or programs or for the lease or use of public lands or buildings for use in the operation of facilities, may be entered into for a period of up to thirty years, subject to the requirements for expenditure of funds by the local governing body or bodies.

3. No contract for juvenile correctional facilities or programs shall be entered into unless the following requirements are met:

a. The contractor provides audited financial statements for the previous five years or for each of the years the contractor has been in operation if fewer than five years, and provides other financial information as requested; and

b. The contractor provides an adequate plan of indemnification, specifically including indemnity for civil rights claims. The indemnification plan shall be adequate to protect the county or city or combination of counties, cities, or towns established pursuant to § 16.1-315 and public officials from all claims and losses incurred as a result of the contract. Nothing herein is intended to deprive a contractor or the county or city or combination of counties, cities, or towns established pursuant to § 16.1-315 of the benefits of any law limiting exposure to liability or setting a limit on damages.

306 4. No contract for correctional services shall be executed unless:
307 a. The proposed contract has been reviewed and approved by the State Board;
308 b. An appropriation for the services to be provided under the contract has been expressly approved as
309 is otherwise provided by law;
310 c. The juvenile correctional facilities or programs proposed by the contract are of at least the same
311 quality as those routinely provided by a governmental agency to similarly situated children; and
312 d. An evaluation of the proposed contract demonstrates a cost benefit to the county or city or
313 combination of counties, cities, or towns established pursuant to § 16.1-315 when compared to
314 alternative means of providing the services through governmental agencies.
315 **2. That this act shall become effective January 1, 1996, if state funds are provided to carry out the**
316 **purposes of the Virginia Juvenile Community Crime Control Act during the 1995 Session of the**
317 **General Assembly.**