

960108836

HOUSE BILL NO. 251

Offered January 10, 1996

A BILL to amend and reenact §§ 16.1-227, 16.1-285, 16.1-285.1, 16.1-285.2, 53.1-63, 53.1-66, 53.1-67, 66-10, and 66-13 of the Code of Virginia, and §§ 16.1-260, 16.1-272 and 16.1-302 of the Code of Virginia, as they are currently effective and as they may become effective, and to amend the Code of Virginia by adding sections numbered 16.1-248.2 and 16.1-302.1, relating to serious offenders; powers of the Department of Youth and Family Services; mental health screening for certain juveniles; duration of commitment; notice to victims; transfer to Department of Corrections; youthful offender program; penalty.

Patrons—Jones, J.C., Abbitt, Almand, Armstrong, Baker, Behm, Bennett, Bloxom, Brickley, Cantor, Christian, Clement, Connally, Cooper, Councill, Cranwell, Crittenden, Croshaw, Cunningham, Davies, Deeds, Diamonstein, Grayson, Hall, Heilig, Hull, Jackson, Jones, D.C., Keating, Marshall, McDonnell, McEachin, Melvin, Mims, Plum, Puller, Reynolds, Rhodes, Robinson, Scott, Shuler, Stump, Tate, Van Landingham, Van Yahres, Watts and Woodrum; Senator: Reasor

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-227, 16.1-285, 16.1-285.1, 16.1-285.2, 53.1-63, 53.1-66, 53.1-67, 66-10, and 66-13 of the Code of Virginia and §§ 16.1-260, 16.1-272 and 16.1-302 of the Code of Virginia, as they are currently effective and as they may become effective, are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-248.2 and 16.1-302.1 as follows:

§ 16.1-227. Purpose and intent.

This law shall be construed liberally and as remedial in character, ~~and the~~ *The* powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all proceedings the welfare of the child and the family is , *the safety of the community and the protection of the rights of victims are* the paramount ~~concern~~ *concerns* of the Commonwealth and to the end that ~~this humane purpose~~ *these purposes* may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.

This law shall be interpreted and construed so as to effectuate the following purposes:

1. To divert from or within the juvenile justice system, to the extent possible, consistent with the protection of the public safety, those children who can be cared for or treated through alternative programs;

2. To provide judicial procedures through which the provisions of this law are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other rights are recognized and enforced;

3. To separate a child from such child's parents, guardian, legal custodian or other person standing in loco parentis only when the child's welfare is endangered or it is in the interest of public safety and then only after consideration of alternatives to out-of-home placement which afford effective protection to the child, his family, and the community; and

4. To protect the community against those acts of its citizens, *both juveniles and adults*, which are harmful to others and to ~~reduce the incidence of delinquent behavior~~ *hold offenders accountable for their behaviors*.

§ 16.1-248.2. Mental health screening for certain juveniles.

Whenever a juvenile is placed in secure detention pursuant to § 16.1-248.1, staff of the facility shall gather such information from the juvenile and the probation officer as is reasonably available and deemed necessary by the facility staff. As part of the intake procedures at each such facility, staff shall ascertain the juvenile's need for a mental health assessment. If it is determined that the juvenile needs such an assessment, arrangements shall be made and the assessment shall take place within twenty-four hours.

§ 16.1-260. Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection FG of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a child. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition

INTRODUCED

HB251

60 on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on
61 its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the
62 clerk except petitions alleging that the subject of the petition is a child alleged to be in need of services,
63 in need of supervision or delinquent. Complaints alleging abuse or neglect of a child shall be referred
64 initially to the local department of public welfare or social services in accordance with the provisions of
65 Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent pleadings in a case shall
66 be filed directly with the clerk. The intake officer or clerk with whom the petition or motion is filed
67 shall inquire whether the petitioner is receiving child support services or public assistance. No individual
68 who is receiving support services or public assistance shall be denied the right to file a petition or
69 motion to establish, modify or enforce an order for support of a child. If the petitioner is seeking or
70 receiving child support services or public assistance, the clerk, upon issuance of process, shall forward a
71 copy of the petition or motion together with notice of the court date to the Division of Child Support
72 Enforcement.

73 B. When the court service unit of any court receives a complaint alleging facts which may be
74 sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake
75 officer, may proceed informally to make such adjustment as is practicable without the filing of a petition
76 or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to
77 establish probable cause for the issuance of the petition.

78 *However, an intake officer may proceed informally on a petition alleging a juvenile is in need of*
79 *services, in need of supervision or delinquent only if the juvenile has not before been the subject of a*
80 *petition alleging that he is in need of supervision or delinquent. Subsequent petitions alleging that the*
81 *child is in need of supervision or delinquent shall be filed with the court.*

82 *Whenever informal action is taken as provided in this subsection on a petition alleging that a child*
83 *is in need of services or supervision or is delinquent, the intake officer shall (i) develop a plan for the*
84 *juvenile to make restitution or perform community service based upon community resources and the*
85 *nature of the event which resulted in the filing of the petition, (ii) create a official record of the action*
86 *taken which shall be filed in the juvenile's case file and (iii) advise the juvenile, the juvenile's parent,*
87 *guardian or other person standing in loco parentis and the petitioner that any subsequent petition*
88 *alleging that the child is in need of supervision or delinquent will be filed with the court.*

89 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
90 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has
91 deserted, abandoned or failed to provide support for any person in violation of law, or (iii) a child or
92 such child's parent, guardian, legal custodian or other person standing in loco parentis is entitled to
93 treatment, rehabilitation or other services which are required by law. If any such complainant does not
94 file a petition, the intake officer may file it. In cases in which a child is alleged to be abused, neglected,
95 in need of services, in need of supervision or delinquent, if the intake officer believes that probable
96 cause does not exist, or that the authorization of a petition will not be in the best interest of the family
97 or child or that the matter may be effectively dealt with by some agency other than the court, he may
98 refuse to authorize the filing of a petition.

99 CD. Prior to the filing of any petition alleging that a juvenile is in need of supervision, the matter
100 shall be reviewed by an intake officer who shall determine whether the petitioner and the juvenile
101 alleged to be in need of supervision have utilized or attempted to utilize treatment and services available
102 in the community and have exhausted all appropriate nonjudicial remedies which are available to them.
103 When the intake officer determines that the parties have not attempted to utilize available treatment or
104 services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer
105 the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment
106 facility or individual to receive treatment or services, and a petition shall not be filed. Only after the
107 intake officer determines that the parties have made a reasonable effort to utilize available community
108 treatment or services, may he permit the petition to be filed.

109 DE. If the intake officer refuses to authorize a petition relating to an offense that if committed by an
110 adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified in
111 writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
112 determines that probable cause exists, he shall issue a warrant returnable to the juvenile and domestic
113 relations district court. The warrant shall be delivered forthwith to the juvenile court, and the intake
114 officer shall accept and file a petition founded upon the warrant. If the court is closed and the magistrate
115 finds that the criteria for detention or shelter care set forth in § 16.1-248.1 have been satisfied, the child
116 may be detained pursuant to the warrant issued in accordance with this subsection. If the intake officer
117 refuses to authorize a petition relating to a child in need of services or in need of supervision, a status
118 offense, or a misdemeanor other than Class 1, his decision is final.

119 Upon delivery to the juvenile court of a warrant issued pursuant to subdivision 3 of § 16.1-256, the
120 intake officer shall accept and file a petition founded upon the warrant.

121 EF. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition

which alleges facts of an offense which would be a felony if committed by an adult.

~~E~~G. After a petition is filed alleging that a juvenile committed an act which would be a crime if committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

1. The unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or

8. Burglary, pursuant to § 18.2-89.

Promptly after filing a petition the intake officer shall also mail notice, by first class mail, to the superintendent. The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

~~F~~H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations or animal control violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision H of § 16.1-241.

3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other alcohol-related offense, provided the child is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a child to the custody of a parent or legal guardian shall issue a summons to the ~~child~~ juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the ~~child~~ juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the ~~child~~ juvenile so charged with a violation of § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the ~~child~~ juvenile, and a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

4. In the case of offenses which, if committed by an adult would be punishable as Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

~~G~~I. Failure to comply with the procedures set forth in this section shall not divest the juvenile court of the jurisdiction granted it in § 16.1-241.

§ 16.1-260. (Delayed effective date) Intake; petition; investigation.

A. All matters alleged to be within the jurisdiction of the court shall be commenced by the filing of a petition, except as provided in subsection ~~F~~H of this section and in § 16.1-259. The form and content of the petition shall be as provided in § 16.1-262. No individual shall be required to obtain support services from the Department of Social Services prior to filing a petition seeking support for a ~~child~~ juvenile. Complaints, requests and the processing of petitions to initiate a case shall be the responsibility of the intake officer. However, (i) the attorney for the Commonwealth of the city or county may file a petition on his own motion with the clerk, (ii) the Department of Social Services may file support petitions on its own motion with the clerk, and (iii) any attorney may file petitions on behalf of his client with the clerk except petitions alleging that the subject of the petition is a child alleged to be in

183 need of services, in need of supervision or delinquent. In addition, all cases for divorce, annulment or
184 affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, adoption,
185 change of name, amendment of a record of birth and judicial review of school board actions and of
186 hearing officer decisions shall be filed directly with the clerk. Complaints alleging abuse or neglect of a
187 child shall be referred initially to the local department of public welfare or social services in accordance
188 with the provisions of Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Motions and other subsequent
189 pleadings in a case shall be filed directly with the clerk. The intake officer or clerk with whom the
190 petition or motion is filed shall inquire whether the petitioner is receiving child support services or
191 public assistance. No individual who is receiving support services or public assistance shall be denied
192 the right to file a petition or motion to establish, modify or enforce an order for support of a child. If
193 the petitioner is seeking or receiving child support services or public assistance, the clerk, upon issuance
194 of process, shall forward a copy of the petition or motion together with notice of the court date to the
195 Division of Child Support Enforcement.

196 B. When the court service unit of any court receives a complaint alleging facts which may be
197 sufficient to invoke the jurisdiction of the court pursuant to § 16.1-241, the unit, through an intake
198 officer, may proceed informally to make such adjustment as is practicable without the filing of a petition
199 or may authorize a petition to be filed by any complainant having sufficient knowledge of the matter to
200 establish probable cause for the issuance of the petition.

201 *However, an intake officer may proceed informally on a petition alleging a juvenile is in need of*
202 *services, in need of supervision or delinquent only if the juvenile has not before been the subject of a*
203 *petition alleging that he is in need of supervision or delinquent. Subsequent petitions alleging that the*
204 *child is in need of supervision or delinquent shall be filed with the court.*

205 *Whenever informal action is taken as provided in this subsection on a petition alleging that a child*
206 *is in need of services or supervision or is delinquent, the intake officer shall (i) develop a plan for the*
207 *juvenile to make restitution or perform community service based upon community resources and the*
208 *nature of the event which resulted in the filing of the petition, (ii) create a official record of the action*
209 *taken which shall be filed in the juvenile's case file and (iii) advise the juvenile, the juvenile's parent,*
210 *guardian or other person standing in loco parentis and the petitioner that any subsequent petition*
211 *alleging that the child is in need of supervision or delinquent will be filed with the court.*

212 C. The intake officer shall accept and file a petition in which it is alleged that (i) the custody,
213 visitation or support of a child is the subject of controversy or requires determination, (ii) a person has
214 deserted, abandoned or failed to provide support or separate maintenance for any person in violation of
215 law, or (iii) a ~~child~~ juvenile or such ~~child's~~ juvenile's parent, guardian, legal custodian or other person
216 standing in loco parentis is entitled to treatment, rehabilitation or other services which are required by
217 law. If any such complainant does not file a petition, the intake officer may file it. In cases in which a
218 child is alleged to be abused, neglected, in need of services, in need of supervision or delinquent, if the
219 intake officer believes that probable cause does not exist, or that the authorization of a petition will not
220 be in the best interest of the family or ~~child~~ juvenile or that the matter may be effectively dealt with by
221 some agency other than the court, he may refuse to authorize the filing of a petition.

222 CD. Prior to the filing of any petition alleging that a juvenile is in need of supervision, the matter
223 shall be reviewed by an intake officer who shall determine whether the petitioner and the juvenile
224 alleged to be in need of supervision have utilized or attempted to utilize treatment and services available
225 in the community and have exhausted all appropriate nonjudicial remedies which are available to them.
226 When the intake officer determines that the parties have not attempted to utilize available treatment or
227 services or have not exhausted all appropriate nonjudicial remedies which are available, he shall refer
228 the petitioner and the child alleged to be in need of supervision to the appropriate agency, treatment
229 facility or individual to receive treatment or services, and a petition shall not be filed. Only after the
230 intake officer determines that the parties have made a reasonable effort to utilize available community
231 treatment or services, may he permit the petition to be filed.

232 DE. If the intake officer refuses to authorize a petition relating to an offense which if committed by
233 an adult would be punishable as a Class 1 misdemeanor or as a felony, the complainant shall be notified
234 in writing at that time of the complainant's right to apply to a magistrate for a warrant. If a magistrate
235 determines that probable cause exists, he shall issue a warrant returnable to the family court. The
236 warrant shall be delivered forthwith to the family court, and the intake officer shall accept and file a
237 petition founded upon the warrant. If the court is closed and the magistrate finds that the criteria for
238 detention or shelter care set forth in § 16.1-248.1 have been satisfied, the ~~child~~ juvenile may be detained
239 pursuant to the warrant issued in accordance with this subsection. If the intake officer refuses to
240 authorize a petition relating to a child in need of services or in need of supervision, a status offense, or
241 a misdemeanor other than Class 1, his decision is final.

242 Upon delivery to the family court of a warrant issued pursuant to subdivision 3 of § 16.1-256, the
243 intake officer shall accept and file a petition founded upon the warrant.

244 EF. The intake officer shall notify the attorney for the Commonwealth of the filing of any petition

which alleges facts of an offense which would be a felony if committed by an adult.

~~E~~G. After a petition is filed alleging that a juvenile committed an act which would be a crime if committed by an adult, the intake officer shall, as soon as practicable, provide notice by telephone of the filing of the petition and the nature of the offense to the superintendent of the school division in which the petitioner alleges the juvenile is or should be enrolled, provided the violation involves:

1. The unlawful purchase, possession or use of a weapon pursuant to Article 4 (§ 18.2-279 et seq.) of Chapter 7 of Title 18.2;

2. Homicide, pursuant to Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2;

3. Felonious assault and bodily wounding, pursuant to Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2;

4. Criminal sexual assault, pursuant to Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2;

5. Manufacture, sale, gift, distribution or possession of Schedule I or II controlled substances, pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

6. Manufacture, sale or distribution of marijuana pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2;

7. Arson and related crimes, pursuant to Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or

8. Burglary, pursuant to § 18.2-89.

Promptly after filing a petition the intake officer shall also mail notice, by first class mail, to the superintendent. The failure to provide information regarding the school in which the juvenile who is the subject of the petition may be enrolled shall not be grounds for refusing to file a petition.

The information provided to a division superintendent pursuant to this section may be disclosed only as provided in § 16.1-305.2.

~~F~~H. The filing of a petition shall not be necessary:

1. In the case of violations of the traffic laws, including offenses involving bicycles, hitchhiking and other pedestrian offenses, game and fish laws or a violation of the ordinance of any city regulating surfing or any ordinance establishing curfew violations or animal control violations. In such cases the court may proceed on a summons issued by the officer investigating the violation in the same manner as provided by law for adults. Additionally, an officer investigating a motor vehicle accident may, at the scene of the accident or at any other location where a juvenile who is involved in such an accident may be located, proceed on a summons in lieu of filing a petition.

2. In the case of seeking consent to apply for the issuance of a work permit pursuant to subdivision H of § 16.1-241.

3. In the case of a violation of § 18.2-266 or § 29.1-738, or the commission of any other alcohol-related offense, provided the ~~child~~ juvenile is released to the custody of a parent or legal guardian pending the initial court date. The officer releasing a ~~child~~ juvenile to the custody of a parent or legal guardian shall issue a summons to the ~~child~~ juvenile and shall also issue a summons requiring the parent or legal guardian to appear before the court with the ~~child~~ juvenile. Disposition of the charge shall be in the manner provided in § 16.1-278.8 or § 16.1-278.9. If the ~~child~~ juvenile so charged with a violation of § 18.2-266 or § 29.1-738 refuses to provide a sample of blood or breath or samples of both blood and breath for chemical analysis pursuant to §§ 18.2-268.1 through 18.2-268.12 or § 29.1-738.2, the provisions of these sections shall be followed except that the magistrate shall authorize execution of the warrant as a summons. The summons shall be served on a parent or legal guardian and the ~~child~~ juvenile, and a copy of the summons shall be forwarded to the court in which the violation of § 18.2-266 or § 29.1-738 is to be tried.

4. In cases of divorce, annulment or affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, and judicial review of school board actions and of hearing officer decisions.

5. In the case of offenses which, if committed by an adult would be punishable as Class 3 or Class 4 misdemeanor. In such cases the court may direct that an intake officer proceed as provided in § 16.1-237 on a summons issued by the officer investigating the violation in the same manner as provided by law for adults provided that notice of the summons to appear is mailed by the investigating officer within five days of the issuance of the summons to a parent or legal guardian of the juvenile.

~~G~~I. Failure to comply with the procedures set forth in this section shall not divest the family court of the jurisdiction granted it in § 16.1-241.

§ 16.1-272. Power of circuit court over juvenile offender.

A. In the hearing and disposition of felony cases properly before a circuit court having criminal jurisdiction of such offenses if committed by an adult, the court, after giving the juvenile the right to a trial by jury on the issue of guilt or innocence and upon a finding of guilty, 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 ~~law~~ chapter for the hearing and disposition of cases in the juvenile court, *including, but not limited to, commitment under § 16.1-285.1.*

306 B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile
307 court and places the ~~child~~ juvenile on probation, the ~~child~~ juvenile may be supervised by a juvenile
308 probation officer.

309 C. Whether the court sentences and commits the ~~child~~ juvenile as a juvenile under this chapter or
310 under the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ 18.2-61,
311 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
312 victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,
313 subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by
314 § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

315 § 16.1-272. (Delayed effective date) Power of circuit court over juvenile offender.

316 A. In the hearing and disposition of felony cases properly before a circuit court having criminal
317 jurisdiction of such offenses if committed by an adult, the court, after giving the juvenile the right to a
318 trial by jury on the issue of guilt or innocence and upon a finding of guilty, may sentence or commit
319 the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its
320 discretion deal with the juvenile in the manner prescribed in this ~~law~~ chapter for the hearing and
321 disposition of cases in the family court, *including, but not limited to, commitment under § 16.1-285.1.*

322 B. If the circuit court decides to deal with the juvenile in the same manner as a case in the family
323 court and places the ~~child~~ juvenile on probation, the ~~child~~ juvenile may be supervised by a juvenile
324 probation officer of the family court.

325 C. Whether the court sentences and commits the ~~child~~ juvenile as a juvenile under this chapter or
326 under the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ 18.2-61,
327 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
328 victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,
329 subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by
330 § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

331 § 16.1-285. Duration of commitments.

332 Except as provided in § 16.1-285.1, all commitments under this ~~law~~ chapter shall be for an
333 indeterminate period having regard to the welfare of the ~~child~~ juvenile and interests of the public, but
334 no ~~child~~ juvenile committed hereunder *for an act other than one constituting murder or manslaughter*
335 *shall be held or detained longer than thirty-six continuous months or after such ~~child~~ juvenile has*
336 *attained the age of twenty-one years; however . However, any ~~child~~ juvenile who is committed under*
337 *this law as an abused or neglected child or a child in need of services shall have the right upon request*
338 *to be released from such commitment at the age of eighteen years. The Department shall have the*
339 *authority to discharge any ~~child~~ juvenile from its custody in accordance with policies and procedures*
340 *established by the State Board and with other provisions of law.*

341 § 16.1-285.1. Commitment of serious offenders.

342 A. In the case of a juvenile fourteen years of age or older who has been found guilty of an offense
343 which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense
344 which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an
345 offense which would be a felony if committed by an adult within the immediately preceding twelve
346 months ~~or~~ , (iii) the felony offense is punishable by a term of confinement of greater than twenty years
347 if the felony was committed by an adult, *or (iv) the juvenile has been previously adjudicated delinquent*
348 *for an offense which if committed by an adult would be a felony punishable by a term of confinement of*
349 *twenty years or more, and the circuit court or the juvenile or family court, as the case may be, finds*
350 *that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and*
351 *would serve the best interests of the community, then the court may order the juvenile committed to the*
352 *Department of Youth and Family Services for placement in a ~~learning center~~ juvenile correctional*
353 *facility for the period of time prescribed pursuant to this section.*

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

355 1. The juvenile's age;

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

362 3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the
363 number and nature of previous contacts with courts, (ii) the number and nature of prior periods of
364 probation, (iii) the number and nature of prior commitments to ~~learning centers~~ *juvenile correctional*
365 *facilities*, (iv) the number and nature of previous residential and community-based treatments, (v)
366 whether previous adjudications and commitments were for delinquent acts that involved the infliction of
367 serious bodily injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated

offenses; and

4. The Department's recommended length of stay based on treatment goals enumerated in the social history report.

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

C. In ordering commitment pursuant to this section, the court shall specify a period of commitment not to exceed seven years or the juvenile's ~~twenty-first~~ *twenty-fifth* birthday, whichever shall occur first.

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

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

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

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

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

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

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

D. At the conclusion of the hearing, the court shall order (i) continued commitment of the juvenile to the Department for completion of the original determinate period of commitment or such lesser time as the court may order or (ii) release of the juvenile under such terms and conditions as the court may prescribe. *However, if the juvenile has attained age eighteen years at the time of the hearing, the court may order the transfer of the person to the Department of Corrections for confinement in a youthful offender facility established pursuant to Article 4 (§ 53.1-63 et seq.) of Chapter 2 of Title 53.1 for completion of the original determinate period of commitment. Once such person is transferred to the Department of Corrections, no further annual or other review hearing shall be conducted by the juvenile or family court. The court shall order any person so transferred to be placed under post-release supervision upon release from the youthful offender facility. The period of supervision shall be established by the committing court at the time of transfer; however, such period shall not be less than six months nor more than three years. Post-release supervision shall be conducted in the same manner as provided under § 19.2-295.2.* In making a determination under this section, the court shall consider (i)

the experiences and character of the juvenile before and after commitment, (ii) the nature of the offenses that the juvenile was found to have committed, (iii) the manner in which the offenses were committed, (iv) the protection of the community, (v) the recommendations of the Department, and (vi) any other factors the court deems relevant. The order of the court shall be final and not subject to appeal.

§ 16.1-302. Dockets, indices and order books; when hearings and records private; right to public hearing; presence of juvenile in court.

Every juvenile court shall keep a separate docket of cases arising under this law.

Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order book or file for cases on appeal from the juvenile court except: (i) cases involving support pursuant to § 20-61 or subdivisions A 3, F or L of § 16.1-241; (ii) cases involving criminal offenses committed by adults which are commenced on a warrant or a summons as described in Title 19.2; and (iii) cases involving civil commitments of adults pursuant to Title 37.1. Such cases shall be docketed on the appropriate docket and the orders in such cases shall be entered in the appropriate order book as used with similar cases commenced in circuit court.

~~The general public shall be excluded from all juvenile court hearings and only such persons admitted as the judge shall deem proper, except that in All juvenile and domestic relations court hearings held on a petition alleging that a juvenile fourteen years of age or older committed an offense specified in subsection B of § 16.1-269.1 shall be open except that the court, sua sponte or on motion of the juvenile or the attorney for the Commonwealth, may for good cause shown close the proceedings.~~

~~In any other hearing held for the purpose of adjudicating the an alleged violation of any criminal law, or law defining a traffic infraction, the child juvenile or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person. The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court appearance and admit to the infraction or infractions if he or she appears in person at the court or before a magistrate or signs and either mails or delivers to the court or magistrate a written form of appearance, plea, and waiver, provided that the written plea form containing the signature of the emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody of a child of tender years, the presence of such child juvenile in court may be waived by the judge at any stage thereof.~~

§ 16.1-302. (Delayed effective date) Dockets, indices and order books; hearings and records private; right to public hearing; presence of juvenile in court.

Every family court shall keep a separate docket of cases arising under this law.

Every circuit court shall keep a separate docket, index, and, for entry of its orders, a separate order book or file for cases on appeal from the family court except: (i) cases involving support pursuant to § 20-61; (ii) cases involving criminal offenses committed by adults which are commenced on a warrant or a summons as described in Title 19.2; and (iii) cases involving civil commitments of adults pursuant to Title 37.1. Such cases shall be docketed on the appropriate docket and the orders in such cases shall be entered in the appropriate order book as used with similar cases commenced in circuit court.

~~The general public shall be excluded from all family court hearings and only such persons admitted as the judge shall deem proper, except that (i) this provision shall not apply to cases for All proceedings in the family court shall be open to the public in cases involving (i) divorce, annulment or affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, change of name, amendment of a birth certificate, or judicial review of school board actions or of hearing officer decisions; and (ii) in any hearing held for the purpose of adjudicating the alleged violation of any criminal law, or law defining a traffic infraction, the child or adult so charged shall have a right to be present and shall have the right to a public hearing unless expressly waived by such person unless, for good cause shown, and on motion of the Commonwealth, the juvenile or sua sponte, the court orders the proceedings closed, petitions alleging that a juvenile fourteen years of age or older committed an offense specified in subsection B of § 16.1-269.1.~~

~~In all other cases, the public shall be excluded and only such persons admitted as the court deems proper.~~

~~In any hearing held for the purpose of adjudicating an alleged violation of any criminal law, or law defining a traffic infraction, a juvenile or adult so charged shall have a right to be present.~~

The chief judge may provide by rule that any juvenile licensed to operate a motor vehicle who has been charged with a traffic infraction may waive court appearance and admit to the infraction or

infractions charged if he or she and a parent, legal guardian, or person standing in loco parentis to the juvenile appear in person at the court or before a magistrate or sign and either mail or deliver to the court or magistrate a written form of appearance, plea and waiver, provided that the written form contains the notarized signature of the parent, legal guardian, or person standing in loco parentis to the juvenile. An emancipated juvenile charged with a traffic infraction shall have the opportunity to waive court appearance and admit to the infraction or infractions if he or she appears in person at the court or before a magistrate or signs and either mails or delivers to the court or magistrate a written form of appearance, plea, and waiver, provided that the written plea form containing the signature of the emancipated juvenile is accompanied by a notarized sworn statement which details the facts supporting the claim of emancipated status. Whenever the sole purpose of a proceeding is to determine the custody of a child of tender years, the presence of such ~~child~~ juvenile in court may be waived by the judge at any stage thereof.

§ 16.1-302.1. *Right of victim or representative to attend certain proceedings.*

During proceedings involving petitions alleging that a juvenile is delinquent, including proceedings on appeal, any victim as defined in § 19.2-11.01 may remain in the courtroom. In any such case involving a minor victim, the court may permit an adult chosen by the minor victim to be present in the courtroom during the proceedings in addition to or in lieu of the minor's parent or guardian.

However, if either the attorney for the Commonwealth or any defendant represents to the court that he intends to call as a material witness any victim as defined in § 19.2-11.01, the court shall exclude that person from the trial or proceedings.

The attorney for the Commonwealth shall give prior notice of any such proceedings and changes in the scheduling thereof to any known victim and to any known adult chosen in accordance with this section by a minor victim at the address or telephone number, or both, provided in writing by such person.

§ 53.1-63. Department to establish facilities for persons committed under § 19.2-311 et seq.

The Department shall establish, staff and maintain, at any state correctional facility designated by the Board, programs and housing for the rehabilitation, training and confinement of persons committed to the Department under the provisions of § 16.1-285.2 or Article 2 (§ 19.2-311 et seq.) of Chapter 18 of Title 19.2. Persons admitted to these facilities shall be determined by the Department to have the potential for rehabilitation through confinement and treatment therein.

§ 53.1-66. Transfer of prisoners to other facilities.

Any person confined by the Department in a facility established by this chapter may be transferred from such facility to other facilities in the state corrections system for the remainder of the period of commitment under § 16.1-285.2 or Article 2 (§ 19.2-311 et seq.) of Chapter 18 of Title 19.2 upon a written finding by the Department submitted to the sentencing court that the person has exhibited intractable behavior or otherwise becomes ineligible to use such facilities pursuant to § 19.2-311.

"Intractable behavior" means behavior which (i) indicates an inmate's unwillingness or inability to conform his behavior to that necessary to his successful completion of the program or (ii) is so disruptive as to threaten the successful completion of the program by other participants.

§ 53.1-67. Admission to facility; good conduct allowance restricted.

In no case shall a person previously confined in a youthful offender facility, whether for a different or the same offense, be confined again in such a facility, except for the purposes of study, testing and diagnosis.

The provisions of §§ 53.1-191, 53.1-196, and 53.1-198 through 53.1-201 relating to good conduct credits and allowances and extraordinary service and the provisions of § 53.1-187 relating to credit for time served in a correctional facility or juvenile detention facility shall not apply to persons (i) sentenced to an indeterminate sentence under § 19.2-311 for a crime committed on or after July 1, 1983, or (ii) committed under the provisions of § 16.1-285.2. Acts performed by such persons which would earn credit for them under § 53.1-191, if it were applicable, shall be noted on their record by the authorities of the facility.

§ 66-10. Powers and duties of Board.

The Board shall have the following powers and duties:

1. To develop and establish programmatic and fiscal policies governing the operation of programs and facilities for which the Department is responsible under this law.

2. To ensure the development and implementation of a long-range youth services policy.

3. To review and comment on all budgets and requests for appropriations for the Department prior to their submission to the Governor and on all applications for federal funds.

4. To monitor the activities of the Department and its effectiveness in implementing the policies of the Board.

5. To advise the Governor, Director and the General Assembly on matters relating to youth services.

6. To promulgate such regulations as may be necessary to carry out the provisions of this title and

552 other laws of the Commonwealth administered by the Director or the Department. The Board of Youth
553 and Family Services may adopt such Board of Corrections' regulations and standards as it may deem
554 appropriate. If regulations and standards so adopted are not amended substantively by the Board of
555 Youth and Family Services, such Board need not comply with the provisions of Article 2 (§ 9-6.14:7.1
556 et seq.) of Chapter 1.1:1 of Title 9.

557 7. To ensure the development of programs to educate citizens and elicit public support for the
558 activities of the Department.

559 8. *To establish length-of-stay guidelines for juveniles indeterminately committed to the Department*
560 *and to make such guidelines available for public comment.*

561 § 66-13. Authority of Department as to juveniles committed to it; establishment of facilities;
562 arrangements for temporary care.

563 The Department is authorized and empowered to receive ~~children~~ juveniles committed to it by the
564 courts of the Commonwealth pursuant to § ~~16-1-278~~.8. The Department shall establish, staff and
565 maintain facilities for the rehabilitation, training and confinement of such ~~children~~ juveniles. The
566 Department may make arrangements with satisfactory persons, institutions or agencies, or with cities or
567 counties maintaining places of detention for ~~children~~ juveniles, for the temporary care of such ~~children~~
568 juveniles.

569 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
570 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
571 **is \$24,197,225.**