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## SENATE BILL NO. 303

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 11, 1996)

(Patron Prior to Substitute—Senator Norment)

A *BILL to amend and reenact §§ 16.1-285.1 and 16.1-285.2 of the Code of Virginia, relating to commitment of serious offenders; release and review hearing for serious offenders; parole services.*

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

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

§ 16.1-285.1. Commitment of serious offenders.

A. In the case of a juvenile fourteen years of age or older who has been found guilty of an offense which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months or (iii) the felony offense is punishable by a term of confinement of greater than twenty years if the felony was committed by an adult, and the court finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, then the court may order the juvenile committed to the Department of Youth and Family Services for placement in a learning center for the period of time prescribed pursuant to this section.

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

1. The juvenile's age;

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

3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the number and nature of previous contacts with courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to learning centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of 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 birthday, whichever shall occur first. *The court shall also order (i) a period of determinate parole supervision to follow the commitment, (ii) a period of indeterminate parole supervision to follow the commitment, or (iii) that no parole supervision is to follow the commitment. Parole supervision shall not extend beyond the juvenile's twenty-first birthday.*

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 for the time prescribed by the committing court. Such a placement decision shall be made based on the welfare 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 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

60 commitment and sixty days prior to each annual anniversary thereafter.

61 § 16.1-285.2. Release and review hearing for serious offender.

62 A. Upon receipt of a petition of the Department of Youth and Family Services for a hearing  
63 concerning a juvenile committed under § 16.1-285.1, the court shall schedule a hearing within thirty  
64 days and shall appoint counsel for the juvenile pursuant to § 16.1-266. The court shall provide a copy of  
65 the petition, the progress report required by this section, and notice of the time and place of the hearing  
66 to (i) the juvenile, (ii) the juvenile's parent, legal guardian, or person standing in loco parentis, (iii) the  
67 juvenile's guardian ad litem, if any, (iv) the juvenile's legal counsel, and (v) the attorney for the  
68 Commonwealth who prosecuted the juvenile during the delinquency proceeding.

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

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

80 D. At the conclusion of the hearing, the court shall order (i) continued commitment of the juvenile to  
81 the Department for completion of the original determinate period of commitment , or such lesser time  
82 *followed by a period of parole supervision* as the court may order or (ii) release of the juvenile under  
83 such terms and conditions as the court may prescribe. In making a determination under this section, the  
84 court shall consider (i) the experiences and character of the juvenile before and after commitment, (ii)  
85 the nature of the offenses that the juvenile was found to have committed, (iii) the manner in which the  
86 offenses were committed, (iv) the protection of the community, (v) the recommendations of the  
87 Department, and (vi) any other factors the court deems relevant. The order of the court shall be final  
88 and not subject to appeal.