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HOUSE BILL NO. 586

Offered January 21, 1998

A BILL to amend and reenact § 16.1-278.8 of the Code of Virginia, as it is effective and as it may become effective, relating to delinquent juveniles; penalty.

Patrons—Albo, Abbitt, Bloxom, Bryant, Callahan, Councill, Darner, Davis, Devolites, Dillard, Drake, Dudley, Hamilton, Hull, Keating, Landes, McClure, McQuigg, Putney, Robinson, Ruff, Rust, Tata, Van Landingham, Watts and Weatherholtz; Senators: Ticer and Woods

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

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

§ 16.1-278.8. Delinquent juveniles.

A. 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;

4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the juvenile (i) is otherwise eligible for commitment to the Department, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;

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

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60 physical custody of the court during any period of curfew restriction. The court shall send an abstract of
61 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall
62 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this
63 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement
64 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be
65 noted all curfew restrictions, shall be provided to the juvenile and shall contain such information
66 regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor
67 vehicle under the court order in accordance with its terms.

68 Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this
69 section shall be guilty of a violation of § 46.2-301.

70 The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a
71 driver's license until such time as is stipulated in the court order or until notification by the court of
72 withdrawal of the order imposing the curfew;

73 10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual
74 damages or loss caused by the offense for which the juvenile was found to be delinquent;

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

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

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

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

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

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

103 14. Commit the juvenile to the Department of Juvenile Justice, but only if he is older than ten years
104 of age and the current offense is (i) an offense which would be a felony if committed by an adult or (ii)
105 an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has
106 previously been found to be delinquent based on an offense which would be either a felony or Class 1
107 misdemeanor if committed by an adult;

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

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

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

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

112 *B. A juvenile found to be delinquent based on an act which would be a misdemeanor if committed by*
113 *an adult shall be required to participate in a public service project under such conditions as may be*
114 *prescribed by the juvenile or circuit court.*

115 § 16.1-278.8. (Delayed effective date) Delinquent juveniles.

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

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

120 2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the
121 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;

4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the juvenile (i) is otherwise eligible for commitment to the Department, (ii) has not previously been and is not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not previously been committed to and received by the Department and (v) has had an assessment completed by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition as authorized by this section which could have been imposed at the time the juvenile was placed in the custody of the Department;

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;

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;

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

187 c. The local board of public welfare or social services of the county or city in which the court has
188 jurisdiction or, at the discretion of the court, to the local board of the county or city in which the
189 juvenile has residence if other than the county or city in which the court has jurisdiction. The board
190 shall accept the juvenile for care and custody, provided that it has been given reasonable notice of the
191 pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in
192 which the court has jurisdiction, such local board may be required to temporarily accept a juvenile for a
193 period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge
194 entering the placement order describes the emergency and the need for such temporary placement in the
195 order. Nothing in this subdivision shall prohibit the commitment of a juvenile to any local board of
196 public welfare or social services in the Commonwealth when such local board consents to the
197 commitment. The board to which the juvenile is committed shall have the final authority to determine
198 the appropriate placement for the juvenile. Any order authorizing removal from the home and
199 transferring legal custody of a juvenile to a local board of public welfare or social services as provided
200 in this subdivision shall be entered only upon a finding by the court that reasonable efforts have been
201 made to prevent removal and that continued placement in the home would be contrary to the welfare of
202 the juvenile, and the order shall so state;

203 14. Commit the juvenile to the Department of Juvenile Justice, but only if he is older than ten years
204 of age and the current offense is (i) an offense which would be a felony if committed by an adult or (ii)
205 an offense which would be a Class 1 misdemeanor if committed by an adult and the juvenile has
206 previously been found to be delinquent based on an offense which would be either a felony or Class 1
207 misdemeanor if committed by an adult;

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

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

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

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

212 *B. A juvenile found to be delinquent based on an act which would be a misdemeanor if committed by*
213 *an adult shall be required to participate in a public service project under such conditions as may be*
214 *prescribed by the family or circuit court.*