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SENATE BILL NO. 264

Offered January 16, 1998

A BILL to amend and reenact § 16.1-278.8, as it is currently effective and as it may become effective, and § 16.1-290 of the Code of Virginia, relating to disposition of delinquent juveniles; payment for predispositional services.

Patrons—Reynolds; Delegates: Armstrong and Day

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-278.8, as it is currently effective and as it may become effective, and § 16.1-290 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.8. Delinquent juveniles.

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

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

2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the court may order with respect to the juvenile and his parent;

3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the juvenile and his parent;

4. Defer disposition for a period of time not to exceed twelve months, after which time the charge may be dismissed by the judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

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 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 and (iv) has not previously been committed to and received by the Department. 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

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

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

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

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

73 *10a. Order the juvenile and his parents or other persons legally obligated to care for and support*
74 *the juvenile to pay, in such manner as the court may direct, a reasonable sum commensurate with the*
75 *ability to pay, that will cover all or part of the costs of support and treatment of the juvenile incurred*
76 *while the juvenile was in detention or shelter care prior to disposition;*

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

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

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

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

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

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

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

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

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

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

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

114 § 16.1-278.8. (Delayed effective date) Delinquent juveniles.

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

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

119 2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the
120 court may order with respect to the juvenile and his parent;

121 3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such

122 treatment or be subject to such conditions and limitations as the court may order and as are designed for
123 the rehabilitation of the juvenile and his parent;

124 4. Defer disposition for a period of time not to exceed twelve months, after which time the charge
125 may be dismissed by the judge if the juvenile exhibits good behavior during the period for which
126 disposition is deferred;

127 4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a
128 boot camp established pursuant to § 66-13 provided the juvenile (i) is otherwise eligible for commitment
129 to the Department, (ii) has not previously been and is not currently being adjudicated delinquent or
130 found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp and (iv) has not
131 previously been committed to and received by the Department. Upon the juvenile's withdrawal, removal
132 or refusal to comply with the terms and conditions of participation in the program, he shall be brought
133 before the court for a hearing at which the court may impose any other disposition as authorized by this
134 section which could have been imposed at the time the juvenile was placed in the custody of the
135 Department;

136 5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer
137 disposition of the delinquency charge for a period not to exceed twelve months and place the juvenile
138 on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the
139 terms and conditions, the court shall discharge the juvenile and dismiss the proceedings against him.
140 Discharge and dismissal under these provisions shall be without adjudication of guilt;

141 6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such
142 programs, cooperate in such treatment or be subject to such conditions and limitations as the court may
143 order and as are designed for the rehabilitation of the juvenile where the court determines this
144 participation to be in the best interest of the juvenile and other parties concerned and where the court
145 determines it reasonable to expect the parent to be able to comply with such order;

146 7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

147 8. Impose a fine not to exceed \$500 upon such juvenile;

148 9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile
149 as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is
150 suspended may be referred for an assessment and subsequent referral to appropriate services, upon such
151 terms and conditions as the court may order. The court, in its discretion and upon a demonstration of
152 hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who
153 enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to
154 and from school. The restricted permit shall be issued in accordance with the provisions of such
155 subsection. However, only an abstract of the court order which identifies the juvenile and the conditions
156 under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

157 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the
158 physical custody of the court during any period of curfew restriction. The court shall send an abstract of
159 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall
160 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this
161 chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement
162 officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be
163 noted all curfew restrictions, shall be provided to the juvenile and shall contain such information
164 regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor
165 vehicle under the court order in accordance with its terms.

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

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

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

173 10a. *Order the juvenile and his parents or other persons legally obligated to care for and support*
174 *the juvenile to pay, in such manner as the court may direct, a reasonable sum commensurate with the*
175 *ability to pay, that will cover all or part of the costs of support and treatment of the juvenile incurred*
176 *while the juvenile was in detention or shelter care prior to disposition;*

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

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

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

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

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

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

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

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

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

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

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

214 § 16.1-290. Support of committed juvenile; support from estate of juvenile; restitution for
215 pre-disposition commitment and services.

216 A. Whenever (i) legal custody of a juvenile is vested by the court in someone other than his parents
217 or (ii) a juvenile is (a) placed in temporary shelter care regardless of whether or not legal custody is
218 retained by his parents, or (b) placed in temporary physical custody of the Department pursuant to
219 subdivision 4a of § 16.1-278.8, after due notice to the parents or other persons legally obligated to care
220 for and support the juvenile, and after an investigation and hearing, the court shall order and decree that
221 the parent or other legally obligated person shall pay, in such a manner as the court may direct, a
222 reasonable sum commensurate with the ability to pay, that will cover all or part of the cost of support
223 and treatment of the juvenile after the decree is entered. If the parent or other legally obligated person
224 willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order
225 may be filed and shall have the effect of a civil judgment.

226 *The authority to order payment pursuant to this section shall be in addition to the authority granted*
227 *to the court pursuant to subdivision 10a of § 16.1-278.8.*

228 B. If a juvenile has an estate in the hands of a guardian or trustee, the guardian or trustee may be
229 required to pay for his education and maintenance so long as there may be funds for that purpose.

230 C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the
231 parent or other legally obligated person shall pay the Department of Social Services pursuant to
232 §§ 20-108.1, 20-108.2, 63.1-204.2, and 63.1-251.3.