

980811844

## SENATE BILL NO. 691

Offered January 26, 1998

A *BILL to amend and reenact §§ 16.1-269.2, 16.1-273, and 16.1-278.8 of the Code of Virginia, as they are effective and as they may become effective, relating to delinquent juveniles involved with gangs; dispositions and report.*

Patrons—Mims, Bolling, Hawkins, Quayle, Reynolds and Trumbo; Delegates: Baker, Blevins, Bryant, Davies, Davis, Drake, Howell and Kilgore

Referred to the Committee for Courts of Justice

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

**1. That §§ 16.1-269.2, 16.1-273, and 16.1-278.8 of the Code of Virginia, as they are effective and as they may become effective, are amended and reenacted as follows:**

§ 16.1-269.2. Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the transfer hearing provided for under § 16.1-269.1 shall not be admissible against him over objection in any criminal proceedings following the transfer, except for purposes of impeachment.

B. Prior to a transfer hearing pursuant to subsection A of § 16.1-269.1, a study and report to the court, in writing, relevant to the factors set out in subdivision A 4 of § 16.1-269.1, *as well as an assessment of any gang affiliation*, shall be made by the probation services or other qualified agency designated by the court. Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. The court shall not consider the report until a finding has been made concerning probable cause. If the court so orders, the study and report may be expanded to include matters provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the hearing, whether or not the juvenile court decides to retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the juvenile court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

§ 16.1-269.2. (Delayed effective date) Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the transfer hearing provided for under § 16.1-269.1 shall not be admissible against him over objection in any criminal proceedings following the transfer, except for purposes of impeachment.

B. Prior to a transfer hearing pursuant to subsection A of § 16.2-269.1, a study and report to the court, in writing, relevant to the factors set out in subdivision A 4 of § 16.1-269.1, *as well as an assessment of any gang affiliation*, shall be made by the probation services or other qualified agency designated by the court. Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. The court shall not consider the report until a finding has been made concerning probable cause. If the court so orders, the study and report may be expanded to include matters provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the hearing, whether or not the family court decides to retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the family court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

§ 16.1-273. Court may require investigation of social history and preparation of victim impact statement.

A. When a juvenile and domestic relations district court or circuit court has adjudicated any case involving a child subject to the jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law or a violation of any city ordinance regulating surfing or establishing curfew violations, the court before final disposition thereof may require an investigation, which may include the physical, mental and social conditions, *including an assessment of any gang affiliation*, and personality of the child and the facts and circumstances surrounding the violation of law.

B. The court also shall, on motion of the attorney for the Commonwealth with the consent of the

INTRODUCED

SB691

60 victim, or may in its discretion, require the preparation of a victim impact statement in accordance with  
61 the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant  
62 physical, psychological or economic injury as a result of the violation of law.

63 § 16.1-273. (Delayed effective date) Court may require investigation of social history.

64 A. When a family court or circuit court has adjudicated any case involving a child subject to the  
65 jurisdiction of the court hereunder, except for a traffic violation, a violation of the game and fish law or  
66 a violation of any city ordinance regulating surfing or establishing curfew violations, the court before  
67 final disposition thereof may require an investigation, which may include the physical, mental and social  
68 conditions, *including an assessment of any gang affiliation*, and personality of the child and the facts  
69 and circumstances surrounding the violation of law.

70 B. The court also shall, on motion of the attorney for the Commonwealth with the consent of the  
71 victim, or may in its discretion, require the preparation of a victim impact statement in accordance with  
72 the provisions of § 19.2-299.1 if the court determines that the victim may have suffered significant  
73 physical, psychological or economic injury as a result of the violation of law.

74 § 16.1-278.8. Delinquent juveniles.

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

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

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

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

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

87 4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a  
88 boot camp established pursuant to § 66-13 provided bed space is available for confinement and the  
89 juvenile (i) is otherwise eligible for commitment to the Department, (ii) has not previously been and is  
90 not currently being adjudicated delinquent or found guilty of a violent juvenile felony, (iii) has not  
91 previously attended a boot camp, (iv) has not previously been committed to and received by the  
92 Department and (v) has had an assessment completed by the Department or its contractor concerning the  
93 appropriateness of the candidate for a boot camp. Upon the juvenile's withdrawal, removal or refusal to  
94 comply with the terms and conditions of participation in the program, he shall be brought before the  
95 court for a hearing at which the court may impose any other disposition as authorized by this section  
96 which could have been imposed at the time the juvenile was placed in the custody of the Department;

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

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

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

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

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

118 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the  
119 physical custody of the court during any period of curfew restriction. The court shall send an abstract of  
120 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall  
121 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;

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

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

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

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

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

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

18. Impose the penalty authorized by § 16.1-278.9.; or

19. *Require the juvenile to participate in a gang-activity prevention program funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if the juvenile has been found delinquent of any of the following violations: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.1, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to § 18.2-138.1.*

*B. If the juvenile has been found delinquent of any of the offenses listed in subdivision A 19, the court shall 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 and shall further require the juvenile to participate in a public service project under such conditions as the court prescribes.*

§ 16.1-278.8. (Delayed effective date) 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 family 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 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;

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

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

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

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

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

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

18. Impose the penalty authorized by § 16.1-278.9.; ~~or~~

19. *Require the juvenile to participate in a gang-activity prevention program funded under the Virginia Juvenile Community Crime Control Act pursuant to § 16.1-309.7, if the juvenile has been found delinquent of any of the following violations: §§ 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.1, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to § 18.2-138.1.*

*B. If the juvenile has been found delinquent of any of the offenses listed in subdivision A 19, the court shall 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 and shall further require the juvenile to participate in a public service project under such conditions as the court prescribes.*