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SENATE BILL NO. 1154

Offered January 9, 2013

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A *BILL to amend and reenact §§ 2.2-5211 and 16.1-284.1 of the Code of Virginia, relating to post-dispositional detention of juvenile in secure local facility.*

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. **That §§ 2.2-5211 and 16.1-284.1 of the Code of Virginia are amended and reenacted as follows:**
§ 2.2-5211. State pool of funds for community policy and management teams.

A. There is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriation act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are to:

1. Place authority for making program and funding decisions at the community level;
2. Consolidate categorical agency funding and institute community responsibility for the provision of services;
3. Provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youths and families; and
4. Reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds that serve the target populations identified in subdivisions 1 through 5 of this subsection in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the purpose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;
2. Children with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;
3. Children for whom foster care services, as defined by § 63.2-905, are being provided to prevent foster care placements, and children placed through parental agreements, entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.2-900;

4. Children placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program, or in a community or facility-based treatment program in accordance with the provisions of subsections B or C of § 16.1-284.1; and

5. Children committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient to (i) provide special education services and foster care services for children identified in subdivisions B 1, B 2 and B 3 and (ii) meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children for whom such services will be required and reserve funds from its state pool allocation to meet these needs. Nothing in this section prohibits local governments from requiring parental or legal financial contributions, where not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale based upon ability to pay, as provided in the appropriation act.

D. When a community services board established pursuant to § 37.2-501, local school division, local

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59 social service agency, court service unit, or the Department of Juvenile Justice has referred a child and
60 family to a family assessment and planning team and that team has recommended the proper level of
61 treatment and services needed by that child and family and has determined the child's eligibility for
62 funding for services through the state pool of funds, then the community services board, the local school
63 division, local social services agency, court service unit or Department of Juvenile Justice has met its
64 fiscal responsibility for that child for the services funded through the pool. However, the community
65 services board, the local school division, local social services agency, court service unit or Department
66 of Juvenile Justice shall continue to be responsible for providing services identified in individual family
67 service plans that are within the agency's scope of responsibility and that are funded separately from the
68 state pool.

69 Further, in any instance that an individual 18 through 21 years of age, inclusive, who is eligible for
70 funding from the state pool and is properly defined as a school-aged child with disabilities pursuant to
71 § 22.1-213 is placed by a local social services agency that has custody across jurisdictional lines in a
72 group home in the Commonwealth and the individual's individualized education program (IEP), as
73 prepared by the placing jurisdiction, indicates that a private day school placement is the appropriate
74 educational program for such individual, the financial and legal responsibility for the individual's special
75 education services and IEP shall remain, in compliance with the provisions of federal law, Article 2
76 (§ 22.1-213) of Chapter 13 of Title 22.1, and Board of Education regulations, the responsibility of the
77 placing jurisdiction until the individual reaches the age of 21, inclusive, or is no longer eligible for
78 special education services. The financial and legal responsibility for such special education services shall
79 remain with the placing jurisdiction, unless the placing jurisdiction has transitioned all appropriate
80 services with the individual.

81 E. In any matter properly before a court for which state pool funds are to be accessed, the court
82 shall, prior to final disposition, and pursuant to §§ 2.2-5209 and 2.2-5212, refer the matter to the
83 community policy and management team for assessment by a local family assessment and planning team
84 authorized by policies of the community policy and management team for assessment to determine the
85 recommended level of treatment and services needed by the child and family. The family assessment
86 and planning team making the assessment shall make a report of the case or forward a copy of the
87 individual family services plan to the court within 30 days of the court's written referral to the
88 community policy and management team. The court shall consider the recommendations of the family
89 assessment and planning team and the community policy and management team. If, prior to a final
90 disposition by the court, the court is requested to consider a level of service not identified or
91 recommended in the report submitted by the family assessment and planning team, the court shall
92 request the community policy and management team to submit a second report characterizing
93 comparable levels of service to the requested level of service. Notwithstanding the provisions of this
94 subsection, the court may make any disposition as is authorized or required by law. Services ordered
95 pursuant to a disposition rendered by the court pursuant to this section shall qualify for funding as
96 appropriated under this section.

97 **§ 16.1-284.1. Placement in secure local facility.**

98 A. If a juvenile 14 years of age or older is found to have committed an offense ~~which~~ *that* if
99 committed by an adult would be punishable by confinement in a state or local correctional facility as
100 defined in § 53.1-1, and the court determines (i) that the juvenile has not previously been and is not
101 currently adjudicated delinquent of a violent juvenile felony or found guilty of a violent juvenile felony,
102 (ii) that the juvenile has not been released from the custody of the Department within the previous 18
103 months, (iii) that the interests of the juvenile and the community require that the juvenile be placed
104 under legal restraint or discipline, and (iv) that other placements authorized by this title will not serve
105 the best interests of the juvenile, then the court may order the juvenile confined in a detention home or
106 other secure facility for juveniles for a period not to exceed six months from the date the order is
107 entered, for a single offense or multiple offenses *that would be considered a misdemeanor if committed*
108 *by an adult and not to exceed 12 months for a single offense or multiple offenses that would be*
109 *considered a felony if committed by an adult.*

110 The period of confinement ordered may exceed 30 calendar days if the juvenile has had an
111 assessment completed by the secure facility to which he is ordered concerning the appropriateness of the
112 placement.

113 B. If the period of confinement in a detention home or other secure facility for juveniles is to exceed
114 30 calendar days, *and the juvenile is eligible for commitment pursuant to subdivision A 14 of*
115 *§ 16.1-278.8,* then the court shall order the juvenile committed to the Department; *if he is eligible*
116 *pursuant to subdivision A 14 of § 16.1-278.8,* but suspend such commitment. In suspending the
117 commitment to the Department as provided for in this subsection, the court shall specify conditions for
118 the juvenile's satisfactory completion of one or more community or facility based treatment programs as
119 may be appropriate for the juvenile's rehabilitation. *If the juvenile is not eligible for commitment*
120 *pursuant to subdivision A 14 of § 16.1-278.8 and the period of confinement is to exceed 30 calendar*

121 days, he may be confined in a detention home or other secure facility for juveniles pursuant to this
122 section.

123 C. Each juvenile placed pursuant to this section for a period that exceeds 90 calendar days shall
124 have an individualized plan for the provision of educational, treatment, and rehabilitative services, as
125 applicable.

126 D. During any period of confinement which exceeds 30 calendar days ordered pursuant to this
127 section, the court shall conduct a mandatory review hearing at least once during each 30 days and at
128 such other times upon the request of the juvenile's probation officer, for good cause shown. If it appears
129 at such hearing that the purpose of the order of confinement has been achieved, the juvenile shall be
130 released on probation for such period and under such conditions as the court may specify and remain
131 subject to the order suspending commitment to the State Department of Juvenile Justice. If the juvenile's
132 commitment to the Department has been suspended as provided in subsection B of this section, and if
133 the court determines at the first or any subsequent review hearing that the juvenile is consistently failing
134 to comply with the conditions specified by the court or the policies and program requirements of the
135 facility, then the court shall order that the juvenile be committed to the State Department of Juvenile
136 Justice. If the court determines at the first or any subsequent review hearing that the juvenile is not
137 actively involved in any community facility based treatment program through no fault of his own, then
138 the court shall order that the juvenile be released under such conditions as the court may specify subject
139 to the suspended commitment.

140 ~~C~~. E. The appearance of the juvenile before the court for a hearing pursuant to subsection ~~C~~ D may
141 be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio
142 communication. If two-way electronic video and audio communication is used, a judge may exercise all
143 powers conferred by law and all communications and proceedings shall be conducted in the same
144 manner as if the appearance were in person, and any documents filed may be transmitted by facsimile
145 process. A facsimile may be served or executed by the officer or person to whom sent, and returned in
146 the same manner, and with the same force, effect, authority, and liability as an original document. All
147 signatures thereon shall be treated as original signatures. Any two-way electronic video and audio
148 communication system used for an appearance shall meet the standards as set forth in subsection B of
149 § 19.2-3.1.

150 ~~D~~. F. A juvenile may only be ordered confined pursuant to this section to a facility in compliance
151 with standards established by the State Board for such placements. Standards for these facilities shall
152 require juveniles placed pursuant to this section for a period which exceeds 30 calendar days be
153 provided separate services for their rehabilitation, consistent with the intent of this section.

154 ~~E~~. G. The Department of Juvenile Justice shall assist the localities or combinations thereof in
155 implementing this section consistent with the statewide plan required by § 16.1-309.4 and pursuant to
156 standards promulgated by the State Board, in order to ensure the availability and reasonable access of
157 each court to the facilities the use of which is authorized by this section.