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SENATE BILL NO. 454

Senate Amendments in [] — February 8, 2016

A *BILL to amend and reenact §§ 16.1-247, 16.1-259, 16.1-262, 16.1-263, 16.1-284, 16.1-291, and 16.1-292 of the Code of Virginia, relating to retained jurisdiction of juvenile court; persons age 18 and older; penalties.*

Patron Prior to Engrossment—Senator Stanley

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-247, 16.1-259, 16.1-262, 16.1-263, 16.1-284, 16.1-291, and 16.1-292 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-247. Duties of person taking child into custody.

A. A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto, bring the child to the judge or intake officer of the court and the judge, intake officer or arresting officer shall, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

B. A person taking a child into custody pursuant to the provisions of subsection B, C, or D of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to such child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for such child and issue oral counsel and warning as may be appropriate; or

2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis upon their promise to bring the child before the court when requested; or

3. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis. Nothing herein shall prevent the child from being held for the purpose of administering a blood or breath test to determine the alcoholic content of his blood where the child has been taken into custody pursuant to § 18.2-266.

C. A person taking a child into custody pursuant to the provisions of subsections E and F of § 16.1-246, during such hours as the court is open, shall, with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to the institution, facility or home from which he ran away or escaped; or

2. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the institution, facility or home in which the child had been placed and orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

D. A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is not open, shall with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child taken into custody pursuant to a warrant on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2; or

2. Place the child in a detention home or in shelter care; or

3. Place the child in a jail subject to the provisions of § 16.1-249.

E. A person taking a child into custody pursuant to the provisions of subsection B, C, or D of § 16.1-246 during such hours as the court is not open, shall:

1. Release the child pursuant to the provisions of subdivision B 1 or B 2 of this section; or

2. Release the child on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2;

or

3. Place the child taken into custody pursuant to subsection B of § 16.1-246 in shelter care after the

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60 issuance of a detention order pursuant to § 16.1-255; or

61 4. Place the child taken into custody pursuant to subsection C or D of § 16.1-246 in shelter care or
62 in a detention home after the issuance of a warrant by a magistrate; or

63 5. Place the child in a jail subject to the provisions of § 16.1-249 after the issuance of a warrant by a
64 magistrate or after the issuance of a detention order pursuant to § 16.1-255; or

65 6. In addition to any other provisions of this subsection, detain the child for a reasonably necessary
66 period of time in order to administer a breath or blood test to determine the alcohol content of his
67 blood, if such child was taken into custody pursuant to § 18.2-266.

68 F. A person taking a child into custody pursuant to the provisions of subsection E of § 16.1-246,
69 during such hours as the court is not open, shall:

70 1. Release the child to the institution or facility from which he ran away or escaped; or

71 2. Detain the child in a detention home or in a jail subject to the provisions of § 16.1-249 after the
72 issuance of a warrant by a magistrate or after the issuance of a detention order pursuant to § 16.1-255.

73 G. A person taking a child into custody pursuant to the provisions of subsection F of § 16.1-246,
74 during such hours as the court is not open, shall:

75 1. Release the child to the facility or home from which he ran away; or

76 2. Detain the child in shelter care after the issuance of a detention order pursuant to § 16.1-255 or
77 after the issuance of a warrant by a magistrate.

78 H. If a parent, guardian or other custodian fails, when requested, to bring the child before the court
79 as provided in subdivisions B 2 and E 1, the court may issue a detention order directing that the child
80 be taken into custody and be brought before the court.

81 I. A law-enforcement officer taking a child into custody pursuant to the provisions of subsection G
82 of § 16.1-246 shall notify the intake officer of the juvenile court of the action taken. The intake officer
83 shall determine if the child's conduct or situation is within the jurisdiction of the court and if a petition
84 should be filed on behalf of the child. If the intake officer determines that a petition should not be filed,
85 the law-enforcement officer shall as soon as practicable:

86 1. Return the child to his home;

87 2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco
88 parentis;

89 3. Place the child in shelter care for a period not longer than 24 hours after the issuance of a
90 detention order pursuant to § 16.1-255; or

91 4. Release the child.

92 During the period of detention authorized by this subsection no child shall be confined in any
93 detention home, jail or other facility for the detention of adults.

94 J. If a child is taken into custody pursuant to the provisions of subsection B, F, or G of § 16.1-246
95 by a law-enforcement officer during such hours as the court is not in session and the child is not
96 released or transferred to a facility or institution in accordance with subsection E, G, or I of this section,
97 the child shall be held in custody only so long as is reasonably necessary to complete identification,
98 investigation and processing. The child shall be held under visual supervision in a nonlocked,
99 multipurpose area which is not designated for residential use. The child shall not be handcuffed or
100 otherwise secured to a stationary object.

101 K. When an adult is taken into custody pursuant to a warrant or, detention order, or *capias* alleging
102 a delinquent act committed when he was a juvenile, he may be released on bail or recognizance
103 pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2. *An intake officer shall have the authority to*
104 *issue a capias for an adult [under the age of 21] who is alleged to have committed, before attaining*
105 *the age of 18, an offense that would be a crime if committed by an adult.*

106 **§ 16.1-259. Procedure in cases of adults.**

107 A. In cases where an adult is charged with violations of the criminal law pursuant to subsection I or
108 J of § 16.1-241, the procedure and disposition applicable in the trial of such cases in general district
109 court shall be applicable to trial in juvenile court. The provisions of this law shall govern in all other
110 cases involving adults.

111 B. Proceedings in cases of adults may be instituted on petition by any interested party, or on a
112 warrant issued as provided by law, or upon the court's own motion.

113 C. *Proceedings in cases of adults [under the age of 21] who are alleged to have committed, before*
114 *attaining the age of 18, an offense that would be a crime if committed by an adult shall be commenced*
115 *by the filing of a petition.*

116 D. *Proceedings for violations of probation or parole in cases of adults [under the age of 21] where*
117 *jurisdiction is retained pursuant to § 16.1-242 shall be commenced by the filing of a petition.*

118 **§ 16.1-262. Form and content of petition.**

119 A. The petition shall contain the facts below indicated:

120 "Commonwealth of Virginia, In re _____ (name of child)" a child under eighteen
121 years of age.

"In the Juvenile and Domestic Relations District Court of the county (or city) of _____"

1. Statement of name, age, date of birth, if known, and residence of the child.

2. Statement of names and residence of his parents, guardian, legal custodian or other person standing in loco parentis and spouse, if any.

3. Statement of names and residence of the nearest known relatives if no parent or guardian can be found.

4. Statement of the specific facts which allegedly bring the child within the purview of this law. If the petition alleges a delinquent act, it shall make reference to the applicable sections of the Code which designate the act a crime.

5. Statement as to whether the child is in custody, and if so, the place of detention or shelter care, and the time the child was taken into custody, and the time the child was placed in detention or shelter care.

B. If the subject of the petition is an adult, the petition shall not state or include the name of or any information concerning the parents, guardians, legal custodian, or person standing in loco parentis of the adult subject of the petition except as may be necessary to state the conduct alleged in the petition.

C. If any of the facts herein required to be stated are not known by the petitioner, the petition shall so state. The petition shall be verified, except that petitions filed under § 63.2-1237 may be signed by the petitioner's counsel, and may be upon information.

In accordance with § 16.1-69.32, the Supreme Court may formulate rules for the form and content of petitions in the juvenile court concerning matters related to the custody, visitation or support of a child and the protection, support or maintenance of an adult where the provisions of this section are not appropriate.

§ 16.1-263. Summonses.

A. After a petition has been filed, the court shall direct the issuance of summonses, one directed to the juvenile, if the juvenile is twelve or more years of age, and another to at least one parent, guardian, legal custodian or other person standing in loco parentis, and such other persons as appear to the court to be proper or necessary parties to the proceedings.

After a petition has been filed against an adult pursuant to subsection C or D of § 16.1-259, the court shall direct the issuance of a summons against the adult.

The summons shall require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned and such person is not a parent of the juvenile in question, a parent shall also be served with a summons. The court may direct that other proper or necessary parties to the proceedings be notified of the pendency of the case, the charge and the time and place for the hearing.

Any such summons shall be deemed a mandate of the court, and willful failure to obey its requirements shall subject any person guilty thereof to liability for punishment for contempt. Upon the failure of any person to appear as ordered in the summons, the court shall immediately issue an order for such person to show cause why he should not be held in contempt.

The parent, guardian, legal custodian or other person standing in loco parentis shall not be summoned to appear or be punished for failure to appear in cases of adults who are brought before the court pursuant to subsection C or D of § 16.1-259 unless such person is summoned as a witness.

B. The summons shall advise the parties of their right to counsel as provided in § 16.1-266. A copy of the petition shall accompany each summons for the initial proceedings. The summons shall include notice that in the event that the juvenile is committed to the Department or to a secure local facility, at least one parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for support and treatment of the juvenile pursuant to § 16.1-290. Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has notified the court that he no longer represents such party.

C. The judge may endorse upon the summons an order directing a parent or parents, guardian or other custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

D. A party, other than the juvenile, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

E. No such summons or notification shall be required if the judge shall certify on the record that (i) the identity of a parent or guardian is not reasonably ascertainable or (ii) in cases in which it is alleged that a juvenile has committed a delinquent act, crime, status offense or traffic infraction or is in need of services or supervision, the location, or in the case of a parent or guardian located outside of the Commonwealth the location or mailing address, of a parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be

183 sufficient evidence of this fact, provided there is no other evidence before the court which would refute
184 such an affidavit. In cases referred to in clause (ii), an affidavit of a law-enforcement officer or juvenile
185 probation officer that the location of a parent or guardian is not reasonably ascertainable shall be
186 sufficient evidence of this fact, provided that there is no other evidence before the court which would
187 refute the affidavit.

188 **§ 16.1-284. When adult sentenced for juvenile offense.**

189 When the juvenile court sentences an adult who has committed, before attaining the age of ~~eighteen~~
190 18, an offense ~~which that~~ would be a crime if committed by an adult, the court may impose, ~~for each~~
191 offense, the penalties that are authorized to be imposed on adults for such violations, not to exceed the
192 punishment for a Class 1 misdemeanor ~~for a single offense or multiple offenses, provided that the total~~
193 jail sentence imposed shall not exceed 36 continuous months and the total fine shall not exceed \$2,500
194 or the court may order a disposition as provided in subdivision A 4, 5, 7, 11, 12, 14, or 17 and
195 subsection B of § 16.1-278.8.

196 B. A person sentenced pursuant to this section shall be entitled to good time credit as authorized by
197 § 53.1-116.

198 **§ 16.1-291. Revocation or modification of probation, protective supervision or parole;**
199 **proceedings; disposition.**

200 A. A juvenile or person who violates an order of the juvenile court entered into pursuant to
201 §§ 16.1-278.2 through 16.1-278.10 or § 16.1-284, who violates the conditions of his probation granted
202 pursuant to § 16.1-278.5 or § 16.1-278.8, or who violates the conditions of his parole granted pursuant
203 to §§ 16.1-285, 16.1-285.1 or § 16.1-293, may be proceeded against for a revocation or modification of
204 such order or parole status. A proceeding to revoke or modify probation, protective supervision or parole
205 shall be commenced by the filing of a petition. Except as otherwise provided, such petitions shall be
206 screened, reviewed and prepared in the same manner and shall contain the same information as provided
207 in §§ 16.1-260 and 16.1-262. The petition shall recite the date that the juvenile or person was placed on
208 probation, under protective supervision or on parole and shall state the time and manner in which notice
209 of the terms of probation, protective supervision or parole were given.

210 B. If a juvenile or person is found to have violated a prior order of the court or the terms of
211 probation or parole, the court may, in accordance with the provisions of §§ 16.1-278.2 through
212 16.1-278.10, upon a revocation or modification hearing, modify or extend the terms of the order of
213 probation or parole, including termination of probation or parole. However, notwithstanding the
214 contempt power of the court as provided in § 16.1-292, the court shall be limited in the actions it may
215 take to those that the court may have taken at the time of the court's original disposition pursuant to
216 §§ 16.1-278.2 through 16.1-278.10, except as hereinafter provided.

217 C. In the event that a child in need of supervision is found to have willfully and materially violated
218 an order of the court or the terms of his probation granted pursuant to § 16.1-278.5, in addition to or in
219 lieu of the dispositions specified in that section, the court may enter any of the following orders of
220 disposition:

221 1. Suspend the child's driver's license upon terms and conditions which may include the issuance of a
222 restricted license for those purposes set forth in subsection E of § 18.2-271.1; or

223 2. Order any such child fourteen years of age or older to be (i) placed in a foster home, group home
224 or other nonsecure residential facility, or, (ii) if the court finds that such placement is not likely to meet
225 the child's needs, that all other treatment options in the community have been exhausted, and that secure
226 placement is necessary in order to meet the child's service needs, detained in a secure facility for a
227 period of time not to exceed ten consecutive days for violation of any order of the court or violation of
228 probation arising out of the same petition. The court shall state in its order for detention the basis for all
229 findings required by this section. When any child is detained in a secure facility pursuant to this section,
230 the court shall direct the agency evaluating the child pursuant to § 16.1-278.5 to reconvene the
231 interdisciplinary team participating in such evaluation, develop further treatment plans as may be
232 appropriate and submit its report to the court of its determination as to further treatment efforts either
233 during or following the period the child is in secure detention. A child may only be detained pursuant to
234 this section in a detention home or other secure facility in compliance with standards established by the
235 State Board. Any order issued pursuant to this subsection is a final order and is appealable as provided
236 by law.

237 D. Nothing in this section shall be construed to reclassify a child in need of supervision as a
238 delinquent.

239 E. If a person adjudicated delinquent and found to have violated an order of the court or the terms of
240 his probation or parole was a juvenile at the time of the original offense and is eighteen years of age or
241 older when the court enters disposition for violation of the order of the court or the terms of his
242 probation or parole, the dispositional alternative specified in § 16.1-284 shall be available to the court.

243 **§ 16.1-292. Violation of court order by any person.**

244 A. Any person violating an order of the juvenile court entered pursuant to §§ 16.1-278.2 through

16.1-278.19 or § 16.1-284, including a parent subject to an order issued pursuant to subdivision 3 of § 16.1-278.8, may be proceeded against (i) by an order requiring the person to show cause why the order of the court entered pursuant to §§ 16.1-278.2 through 16.1-278.19 has not been complied with, (ii) for contempt of court pursuant to § 16.1-69.24 or as otherwise provided in this section, or (iii) by both. Except as otherwise expressly provided herein, nothing in this chapter shall deprive the court of its power to punish summarily for contempt for such acts as set forth in § 18.2-456, or to punish for contempt after notice and an opportunity for a hearing on the contempt except that confinement in the case of a juvenile shall be in a secure facility for juveniles rather than in jail and shall not exceed a period of ten days for each offense. However, if the person violating the order was a juvenile at the time of the original act and is eighteen years of age or older when the court enters a disposition for violation of the order, the judge may order confinement in jail.

B. Upon conviction of any party for contempt of court in failing or refusing to comply with an order of a juvenile court for spousal support or child support under § 16.1-278.15, the court may commit and sentence such party to confinement in a jail, workhouse, city farm or work squad as provided in §§ 20-61 and 20-62, for a fixed or indeterminate period or until the further order of the court. In no event, however, shall such sentence be imposed for a period of more than twelve months. The sum or sums as provided for in § 20-63 shall be paid as therein set forth, to be used for the support and maintenance of the spouse or the child or children for whose benefit such order or decree provided.

C. Notwithstanding the contempt power of the court, the court shall be limited in the actions it may take with respect to a child violating the terms and conditions of an order to those which the court could have taken at the time of the court's original disposition pursuant to §§ 16.1-278.2 through 16.1-278.10, except as hereinafter provided. However, this limitation shall not be construed to deprive the court of its power to (i) punish a child summarily for contempt for acts set forth in § 18.2-456 or (ii) punish a child for contempt for violation of a dispositional order in a delinquency proceeding after notice and an opportunity for a hearing regarding such contempt, including acts of disobedience of the court's dispositional order which are committed outside the presence of the court.

D. In the event a child in need of services is found to have willfully and materially violated for a second or subsequent time the order of the court pursuant to § 16.1-278.4, the dispositional alternatives specified in subdivision 9 of § 16.1-278.8 shall be available to the court.

E. In the event a child in need of supervision is found to have willfully and materially violated an order of the court pursuant to § 16.1-278.5, the court may enter any of the following orders of disposition:

1. Suspend the child's motor vehicle driver's license;
2. Order any such child fourteen years of age or older to be (i) placed in a foster home, group home or other nonsecure residential facility, or, (ii) if the court finds that such placement is not likely to meet the child's needs, that all other treatment options in the community have been exhausted, and that secure placement is necessary in order to meet the child's service needs, detained in a secure facility for a period of time not to exceed ten consecutive days for violation of any order of the court arising out of the same petition. The court shall state in its order for detention the basis for all findings required by this section. When any child is detained in a secure facility pursuant to this section, the court shall direct the agency evaluating the child pursuant to § 16.1-278.5 to reconvene the interdisciplinary team participating in such evaluation as promptly as possible to review its evaluation, develop further treatment plans as may be appropriate and submit its report to the court for its determination as to further treatment efforts either during or following the period the child is in secure detention. A juvenile may only be detained pursuant to this section in a detention home or other secure facility in compliance with standards established by the State Board. Any order issued pursuant to this subsection is a final order and is appealable to the circuit court as provided by law.

F. Nothing in this section shall be construed to reclassify a child in need of services or in need of supervision as a delinquent.