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HOUSE BILL NO. 1991

Offered January 13, 2021

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A BILL to amend and reenact §§ 16.1-285.1 and 16.1-285.2 of the Code of Virginia, relating to juveniles; release and review hearing for serious offender; plea agreement.

Patrons—Jones and Lopez

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-285.1 and 16.1-285.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-285.1. Commitment of serious offenders.

A. In the case of a juvenile fourteen years of age or older who has been found guilty of an offense which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months, (iii) the felony offense is punishable by a term of confinement of greater than twenty years if the felony was committed by an adult, or (iv) the juvenile has been previously adjudicated delinquent for an offense which if committed by an adult would be a felony punishable by a term of confinement of twenty years or more, and the circuit court, or the juvenile or family court, as the case may be, finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, then the court may order the juvenile committed to the Department of Juvenile Justice for placement in a juvenile correctional center for the period of time prescribed pursuant to this section.

Alternatively, in order to determine if a juvenile, transferred from a juvenile and domestic relations district court to a circuit court pursuant to § 16.1-269.1, appropriately qualifies for commitment pursuant to this section, notwithstanding the inapplicability of the qualification criteria set forth in clauses (i) through (iv), the circuit court may consider the commitment criteria set forth in subdivisions 1, 2, and 3 of subsection B as well as other components of the juvenile's life history and, if upon such consideration in the opinion of the court the needs of the juvenile and the interests of the community would clearly best be served by commitment hereunder, may so commit the juvenile.

B. Prior to committing any juvenile pursuant to this section, the court shall consider:

1. The juvenile's age;

2. The seriousness and number of the present offenses, including (i) whether the offense was committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the offense was against persons or property, with greater weight being given to offenses against persons, especially if death or injury resulted; (iii) whether the offense involved the use of a firearm or other dangerous weapon by brandishing, displaying, threatening with or otherwise employing such weapon; and (iv) the nature of the juvenile's participation in the alleged offense;

3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the number and nature of previous contacts with courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the number and nature of previous residential and community-based treatments, (v) whether previous adjudications and commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated offenses; and

4. The Department's estimated length of stay.

Such commitment order must be supported by a determination that the interests of the juvenile and community require that the juvenile be placed under legal restraint or discipline and that the juvenile is not a proper person to receive treatment or rehabilitation through other juvenile programs or facilities.

C. In ordering commitment pursuant to this section, the court shall specify a period of commitment not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first. The court may also order a period of determinate or indeterminate parole supervision to follow the commitment but the total period of commitment and parole supervision shall not exceed seven years or the juvenile's twenty-first birthday, whichever occurs first.

D. Upon receipt of a juvenile committed under the provisions of this section, the Department shall evaluate the juvenile for the purpose of considering placement of the juvenile in an appropriate juvenile correctional center for the time prescribed by the committing court. Such a placement decision shall be

59 made based on the availability of treatment programs at the facility; the level of security at the facility;
60 the offense for which the juvenile has been committed; and the welfare, age and gender of the juvenile.

61 E. The court which commits the juvenile to the Department under this section shall have continuing
62 jurisdiction over the juvenile throughout his commitment. The continuing jurisdiction of the court shall
63 not prevent the Department from removing the juvenile from a juvenile correctional center without prior
64 court approval for the sole purposes of routine or emergency medical treatment, routine educational
65 services, or family emergencies.

66 F. Any juvenile committed under the provisions of this section shall not be released at a time earlier
67 than that specified by the court in its dispositional order except as provided for in § 16.1-285.2. The
68 Department may petition the committing court, *notwithstanding the terms of any plea agreement*, for a
69 hearing as provided for in § 16.1-285.2 for an earlier release of the juvenile when good cause exists for
70 an earlier release. In addition, *notwithstanding the terms of any plea agreement*, the Department shall
71 petition the committing court for a determination as to the continued commitment of each juvenile
72 sentenced under this section at least sixty days prior to the second anniversary of the juvenile's date of
73 commitment and sixty days prior to each annual anniversary thereafter.

74 **§ 16.1-285.2. Release and review hearing for serious offender.**

75 A. Upon receipt of a petition of the Department of Juvenile Justice for a hearing concerning a
76 juvenile committed under § 16.1-285.1, the court shall schedule a hearing within thirty days and shall
77 appoint counsel for the juvenile pursuant to § 16.1-266. The court shall provide a copy of the petition,
78 the progress report required by this section, and notice of the time and place of the hearing to (i) the
79 juvenile, (ii) the juvenile's parent, legal guardian, or person standing in loco parentis, (iii) the juvenile's
80 guardian ad litem, if any, (iv) the juvenile's legal counsel, and (v) the attorney for the Commonwealth
81 who prosecuted the juvenile during the delinquency proceeding. The attorney for the Commonwealth
82 shall provide notice of the time and place of the hearing by first-class mail to the last known address of
83 any victim of the offense for which the juvenile was committed if such victim has submitted a written
84 request for notification to the attorney for the Commonwealth.

85 B. The petition shall be filed in the committing court and shall be accompanied by a progress report
86 from the Department. This report shall describe (i) the facility and living arrangement provided for the
87 juvenile by the Department, (ii) the services and treatment programs afforded the juvenile, (iii) the
88 juvenile's progress toward treatment goals and objectives, which shall include a summary of his
89 educational progress, (iv) the juvenile's potential for danger to either himself or the community, and (v)
90 a comprehensive aftercare plan for the juvenile.

91 B1. The appearance of the juvenile before the court may be by (i) personal appearance before the
92 judge, or (ii) use of two-way electronic video and audio communication. If two-way electronic video
93 and audio communication is used, a judge may exercise all powers conferred by law and all
94 communications and proceedings shall be conducted in the same manner as if the appearance were in
95 person, and any documents filed may be transmitted by facsimile process. A facsimile may be served or
96 executed by the officer or person to whom sent, and returned in the same manner, and with the same
97 force, effect, authority, and liability as an original document. All signatures thereon shall be treated as
98 original signatures. Any two-way electronic video and audio communication system used for an
99 appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

100 C. At the hearing the court shall consider the progress report. The court may also consider additional
101 evidence from (i) probation officers, the juvenile correctional center, treatment professionals, and the
102 court service unit; (ii) the juvenile, his legal counsel, parent, guardian or family member; or (iii) other
103 sources the court deems relevant. The hearing and all records relating thereto shall be governed by the
104 confidentiality provisions of Article 12 (§ 16.1-299 et seq.) of this chapter.

105 D. At the conclusion of the hearing *and notwithstanding the terms of any plea agreement*, the court
106 shall order (i) continued commitment of the juvenile to the Department for completion of the original
107 determinate period of commitment or such lesser time as the court may order or (ii) release of the
108 juvenile under such terms and conditions as the court may prescribe. In making a determination under
109 this section, the court shall consider (i) the experiences and character of the juvenile before and after
110 commitment, (ii) the nature of the offenses that the juvenile was found to have committed, (iii) the
111 manner in which the offenses were committed, (iv) the protection of the community, (v) the
112 recommendations of the Department, and (vi) any other factors the court deems relevant. The order of
113 the court shall be final and not subject to appeal.

114 E. In the case of a juvenile convicted as an adult and committed as a serious offender under
115 subdivision A 1 of § 16.1-272, at the conclusion of the review hearing *and notwithstanding the terms of*
116 *any plea agreement*, the circuit court shall order (i) the juvenile to begin serving any adult sentence in
117 whole or in part that may include any remaining part of the original determinate period of commitment,
118 or (ii) the suspension of the unserved portion of the adult sentence in whole or in part based upon the
119 juvenile's successful completion of the commitment as a serious offender, or (iii) the continued
120 commitment of the juvenile to the Department for completion of the original determinate period of

121 commitment or such lesser time as the court may order, or (iv) the release of the juvenile under such
122 terms and conditions as the court may prescribe.

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