

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 16.1-278.7 of the Code of Virginia and to amend the Code of Virginia by*
 3 *adding a section numbered 16.1-285.3, relating to Department of Juvenile Justice; commitment of*
 4 *juveniles to Department; petition to extend duration of indeterminate commitment.*

5 [S 64]

6 Approved

7 **Be it enacted by the General Assembly of Virginia:**8 **1. That § 16.1-278.7 of the Code of Virginia is amended and reenacted and that the Code of Virginia is**
 9 **amended by adding a section numbered 16.1-285.3 as follows:**10 **§ 16.1-278.7. Commitment to Department of Juvenile Justice.**

11 Only a juvenile who is (i) adjudicated delinquent of an act enumerated in subsection B or C of
 12 § 16.1-269.1 and is 11 years of age or older or (ii) 14 years of age or older may be committed to the
 13 Department of Juvenile Justice. In cases where a waiver of an investigation has been granted pursuant to
 14 subdivision A 14 or A 17 of § 16.1-278.8, at the time a court commits a child to the Department of Juvenile
 15 Justice the court shall order an investigation pursuant to § 16.1-273 to be completed within 15 days. No
 16 juvenile court or circuit court shall order the commitment of any child jointly to the Department of Juvenile
 17 Justice and to a local board of social services or transfer the custody of a child jointly to a court service unit
 18 of a juvenile court and to a local board of social services. Any person sentenced and committed to an active
 19 term of incarceration in the Department of Corrections who is, at the time of such sentencing, in the custody
 20 of the Department of Juvenile Justice, upon pronouncement of sentence, shall be immediately transferred to
 21 the Department of Corrections.

22 *When making a finding that a juvenile should be committed to the Department for an indeterminate*
 23 *period, the court shall consider the following: (i) the Department's estimated length of stay guidelines*
 24 *established by the State Board as required by § 66-10; (ii) that the interests of the juvenile and the community*
 25 *require that the juvenile be placed under legal restraint; and (iii) that the juvenile is not a proper person to*
 26 *receive treatment or rehabilitation through other available programs or facilities.*

27 **§ 16.1-285.3. Petition to extend duration of indeterminate commitment to Department; hearing.**

28 *A. If the Department determines that the duration of a juvenile's indeterminate commitment should exceed*
 29 *the high end of the length of stay range as determined by the State Board, the Department shall petition the*
 30 *court that ordered the juvenile's indeterminate commitment for a review. Notwithstanding the terms of any*
 31 *plea agreement or commitment order and upon the filing of a petition for review, the court shall schedule a*
 32 *hearing to determine whether the period of indeterminate commitment may be extended. The Department*
 33 *shall file a petition for review pursuant to this section at least 60 days prior to the end of the high end of the*
 34 *length of stay range and 60 days prior to each review requested by the Department thereafter. If the*
 35 *Department determines fewer than 60 days before the expiration of the high end of the length of stay range*
 36 *that an extension of the length of stay is necessary, the Department shall file a petition for review as*
 37 *described in subsection B and shall include in such petition a statement of the specific circumstances*
 38 *necessitating the late filing. The court shall appoint counsel to represent the juvenile and the attorney for the*
 39 *Commonwealth shall notify the victim or victim's family of the petition for review and any hearings related to*
 40 *such petition.*

41 *B. The Department shall file the petition for review and an accompanying progress report with the court*
 42 *that ordered the juvenile's commitment. Such progress report shall describe (i) the facility and living*
 43 *arrangement provided to the juvenile by the Department; (ii) any services and treatment programs provided*
 44 *to the juvenile; (iii) the juvenile's progress toward treatment goals and objectives, including a summary of the*
 45 *juvenile's educational progress; (iv) the juvenile's potential for danger to either himself or the community; (v)*
 46 *a comprehensive aftercare plan for the juvenile once he is released from the Department's custody; and (vi)*
 47 *the availability and timing of educational and rehabilitative services that were offered to the juvenile.*

48 *C. The juvenile and Department staff may appear before the court for the hearing, as determined by the*
 49 *judge, either in person or by two-way electronic video and audio communication. If the juvenile appears by*
 50 *two-way electronic video and audio communication, the judge may exercise all powers conferred by law and*
 51 *all communications and proceedings shall be conducted in the same manner as if the juvenile's appearance*
 52 *was in person. Any documents filed may be transmitted by facsimile process or other electronic method. The*
 53 *facsimile or other electronically generated document may be served or executed by the officer or person to*
 54 *whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an*
 55 *original document. Any two-way electronic video and audio communication system used for a juvenile's*
 56 *appearance shall meet the standards as set forth in § 19.2-3.1.*

57 *D. At the hearing, the court shall consider the progress report described in subsection B. The court may*
58 *also consider additional evidence from (i) probation officers, the facility where the juvenile is being held,*
59 *treatment professionals, or the court services unit; (ii) the juvenile, his legal counsel, or a parent, guardian,*
60 *or family member of the juvenile; or (iii) any other source that the court deems relevant to make a*
61 *determination whether to extend the juvenile's indeterminate period of commitment. The hearing and all*
62 *related records shall be subject to the confidentiality provisions of Article 12 (§ 16.1-299 et seq.). In making*
63 *its determination, the court shall consider (a) the experiences and character of the juvenile before*
64 *commitment; (b) the nature of the offenses for which the juvenile was adjudicated delinquent; (c) the manner*
65 *in which the offenses were committed; (d) the recommendations of the Department; and (e) any other factors*
66 *the court deems relevant.*

67 *E. At the conclusion of the hearing, the court shall order that the juvenile's indeterminate period of*
68 *commitment to the Department be extended or that the juvenile be released under such terms and conditions*
69 *as the court may prescribe. If the court determines that the juvenile should continue to serve the*
70 *indeterminate commitment, the court may authorize an extension of the indeterminate period of commitment*
71 *of no more than six months. If the Department determines that it is necessary to extend the indeterminate*
72 *period of commitment longer than six months, the Department shall file another petition for review in*
73 *accordance with the provisions of this section. The order of the court shall be final and shall not be subject to*
74 *appeal.*

75 *Nothing in this section shall be construed to allow a juvenile to be committed to the Department for a*
76 *period of time that exceeds the limitations set by § 16.1-285.*