

Blended Sentencing in Virginia Circuit Courts

If the sentencing court committed a young person to the Department of Juvenile Justice (DJJ) pursuant to [§ 16.1-285.1](#), then the judge ordering that disposition had to have found that “commitment under this section [was] necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community.” This means that the legislative *purpose* behind commitment to DJJ is **rehabilitation**. After two years of incarceration at DJJ, the court shall hold a Serious Offender Review.

I. What is a Serious Offender Review Hearing?

- a. A Serious Offender Review (SOR) hearing occurs in the Circuit or JDR Court where the young offender was sentenced. The sentencing judge has the discretion at each hearing to change the original sentence imposed based on the progress the young person makes during their commitment to DJJ. Virginia law requires a review after 2 years for anyone committed to DJJ and then every year thereafter until they turn 21 or are released.

II. How is the SOR triggered and what is the process?

- a. DJJ petitions the court for a ‘release and review hearing for serious offender’ by filing a **serious offender progress report** and risk assessment 60 days before the 2-year anniversary of the original sentencing date. Within thirty days of the court’s receipt of the petition, the court must schedule the hearing and appoint counsel for the youthful offender pursuant to [§ 16.1-266](#).
- b. Defense attorneys must meet with the client well before the date of the hearing to educate them about what will take place and to help them prepare.
- c. **SOR Re-sentencing rules:** The sentencing judge may suspend any time, including mandatory time,¹ and can allow certain mandatory sentences to be served concurrently.²

III. The Court must do one of the following:

- a. Order Defendant begin serving any adult sentence in whole or in part that may include any remaining part of the original determinate period of commitment; or

¹ Va. Code § 16.1-272 (A) (3) (2020).

² The judge may let mandatory sentences begin during incarceration in a DJJ facility. [Bullock v. Commonwealth, 48 Va. App. 359, 631 S.E.2d 334 \(2006\)](#). You may also ask for certain mandatory sentences to run concurrently or that they not be imposed. See e.g. [Brown v. Commonwealth, 284 Va. 538 \(2012\)](#) (holding that *Bullock* is overruled to the extent that it prohibits mandatory firearms sentences imposed under Va. Code § 18.2-53.1 from running concurrently). *Brown* holds that whether particular offenses may be run concurrently depends on the language of the statute. In *Brown*, the statute at issue states, “such punishment . . . shall be made to run consecutively with any punishment received for the commission of the primary felony.” Therefore, it must run consecutively to offenses of the primary felony charged, but it may run concurrently with other offenses and multiple offenses of the same statute. [Botkin v. Commonwealth, 296 Va. 309 \(2018\)](#) distinguished other statutes in which the statutory language indicated the general assembly’s intent to prohibit even multiple offenses of the same statute from running concurrently. When reconsidering whether sentences may run concurrently, the judge should determine whether the language of the statute there is more like the language of the statute in *Brown* or the statutes at issue in *Botkin*.

- b. Suspend the unserved portion of the adult sentence in whole or in part based upon the client’s successful completion of the serious offender commitment; or
- c. Order the continued commitment to DJJ for the original determinate period of commitment or such lesser time as the court may order; or
- d. Release the client under terms and conditions. [§ 16.1-285.2\(E\)](#).

IV. These hearings are mandatory when the sentence includes a Serious Offender Commitment.

- a. [§ 16.1-285.1\(F\)](#), “Any juvenile committed under the provisions of this section shall not be released at a time earlier than that specified by the court in its dispositional order except as provided for in [§ 16.1-285.2](#).” This is an implied power granted to the court to release the youth offender earlier than “that specified by the [sentencing] court in its [original] dispositional order.”
- b. DJJ is required to request a Serious Offender Review hearing at least sixty days before the second anniversary of the commitment date and sixty days before each annual anniversary thereafter. [§ 16.1-285.1\(F\)](#). The court must consider the youthful offender’s rehabilitation progress and consider re-sentencing accordingly.
- c. If DJJ deems it appropriate, they may also petition the committing court for an earlier release “when good cause exists.” [§ 16.1-285.1\(F\)](#).
- d. The intention of these hearings is for the judge to compare the underlying sentence for the crime committed with this particular youth’s rehabilitation. Studies show that incarcerating young people past the point at which they have been rehabilitated is detrimental not only to them, but to society, and it is incredibly costly.³
- e. DJJ has a number of evidence-based stepdown programs, including, but not limited to: Detention Reentry, Community Placement Programs, and Apartment Living. It is essential to create a strong reentry plan tailored to the young person’s unique needs for successful reentry to the community. Young people who have an opportunity to step down into these programs where they are still under DJJ supervision are more likely to succeed in the community.

V. What must the court consider?

- a. Under [§ 16.1-285.2\(B\)](#), the court must consider DJJ’s prepared **progress report**.
 - i. The progress report must include descriptions of the living arrangement provided for the client by DJJ, the services and treatment programs afforded the client, the client’s progress toward treatment goals and objectives. This will include a summary of educational progress, potential for danger to self or community and a comprehensive aftercare plan for the client. [§ 16.1-285.2\(B\)](#).
- b. The court *must* also consider the factors mentioned in [§ 16.1-285.2\(D\)](#):
 - i. the experiences and character of the juvenile before and after commitment,
 - ii. the nature of the offenses that the juvenile was found to have committed,
 - iii. the manner in which the offenses were committed,

³ Virginia spends over \$170,000 per year on incarcerating youth. For every \$1 spent on community-based services, DJJ spends \$15 on youth incarceration. Justice Policy Center, *Data Snapshot of Youth Incarceration in Virginia* at 3 (2017) <http://www.riseforyouth.org/wp-content/uploads/2015/07/Data-Snapshot-of-Youth-Incarceration-in-VA.pdf>.

- iv. the protection of the community,
- v. the recommendations of the Department,
- vi. the child's exposure to adverse childhood experiences, early childhood trauma, or any child welfare agency,
- vii. the differences between juvenile and adult offenders prior to sentencing,⁴ and
- viii. any other factors the court deems relevant.

VI. What may the court consider?

- i. additional evidence from probation officers, the juvenile correctional center, treatment professionals, and the Court Service unit.
- ii. evidence from the client, his legal counsel, his guardian or family, or sources the court deems relevant. [§ 16.1-285.2\(C\)](#).
 - A. Possible sources: DJJ reentry experts, DJJ counselors and advocates, probation officers, school officials, and vocational technical instructors.

VII. Relevant DJJ Personnel to Testify at SOR Hearing:

- a.** Rehabilitation Counselor: Client's main advocate within DJJ; regularly meets with them. Often the person who drafts and submits the Progress Report to the court.
- b.** Probation Officer: Completes social history and progress reports, supervision release plans, community-based services, and supervises court-ordered probation requirements.
- c.** Behavioral Services Unit (BSU) Therapist: Therapists with master's level of training in social work, psychology, and counseling; they provide mental health, aggression management, sex offender, and substance abuse treatment services inside DJJ.
- d.** Advocate: An individual especially assigned to each DJJ resident to guide them. This is part of the DJJ transformation recognizing that a positive mentor can help reduce recidivism.
- e.** DJJ Reentry Services Experts: They provide a holistic view of all reentry options available.
- f.** DJJ Teachers/Vocational Trainers: Interact often with residents and can provide useful insight on the young person's life goals and interests. Can help with jobs.
- g.** Resident Specialist: Role models for residents, provide structure, and secure space at DJJ.

⁴ Va. Code § 16.1-272 (D) (2020).