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HOUSE BILL NO. 1146

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 13, 2004)

(Patron Prior to Substitute—Delegate McDonnell)

*A BILL to amend and reenact §§ 16.1-269.6 and 16.1-296 of the Code of Virginia, relating to appeals of cases involving juveniles.***Be it enacted by the General Assembly of Virginia:****1. That §§ 16.1-269.6 and 16.1-296 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and appeals.

A. Within seven days after receipt of notice of an appeal from the transfer decision pursuant to subsection A of § 16.1-269.1, by either the attorney for the Commonwealth or the juvenile, or if an appeal to such a decision to transfer is not noted, upon expiration of the time in which to note such an appeal, the clerk of the court shall forward to the circuit court all papers connected with the case, including any report required by subsection B of § 16.1-269.2, as well as a written court order setting forth the reasons for the juvenile court's decision. ~~The~~ *Within seven days after receipt of notice of an appeal, the* clerk shall forward copies of the order to the attorney for the Commonwealth and other counsel of record.

B. The circuit court shall, within a ~~reasonable time~~ *45 days* after receipt of the case from the juvenile court pursuant to subsection A of § 16.1-269.1, (i) if either the juvenile or the attorney for the Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the juvenile court had sufficient evidence to find probable cause; and (ii) enter an order either remanding the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an indictment. *A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings.* Upon advising the attorney for the Commonwealth that he may seek an indictment, the circuit court may issue an order transferring the juvenile from the juvenile detention facility to an appropriate local correctional facility where the juvenile need no longer be entirely separate and removed from adults, unless, upon motion of counsel, good cause is shown for placement of the juvenile pursuant to the limitations of subdivision E (i), (ii), and (iii) of § 16.1-249. However, in cases where a charge has been certified by the juvenile court to the grand jury pursuant to subsection B or C of § 16.1-269.1, the attorney for the Commonwealth may seek an indictment upon such charge and any ancillary charge without obtaining an order of the circuit court advising him that he may do so.

C. The circuit court order advising the attorney for the Commonwealth that he may seek an indictment shall divest the juvenile court of its jurisdiction over the case as well as the juvenile court's jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the juvenile following transfer or certification and trial as an adult, the circuit court shall issue an order terminating the juvenile court's jurisdiction over that juvenile with respect to any future criminal acts alleged to have been committed by such juvenile and with respect to any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction. However, such an order terminating the juvenile court's jurisdiction shall not apply to any allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and domestic relations district court if the defendant were an adult. Upon receipt of the order terminating the juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending petitions of delinquency for proceedings in the appropriate general district court.

D. The judge of the circuit court who reviewed the case after receipt from the juvenile court shall not, over the objection of any interested party, preside over the trial of such charge or charges.

E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not made before arraignment.

F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included as applying to the provisions of § 19.2-243.

§ 16.1-296. Jurisdiction of appeals; procedure.

60 A. From any final order or judgment of the juvenile court affecting the rights or interests of any
61 person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final
62 judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support
63 Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within ~~thirty~~ 30 days from
64 entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of family
65 abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

66 B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney
67 for the Commonwealth a report incorporating the results of any investigation conducted pursuant to
68 § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney
69 for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the
70 court has made its findings on the issues subject to appeal. After final determination of the case, the
71 report and all copies thereof shall be forthwith returned to such juvenile court.

72 C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition
73 pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act
74 may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the
75 alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall
76 be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the
77 jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of
78 § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237
79 or § 16.1-273.

80 C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a
81 disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in
82 the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to
83 this subsection, any records or portions thereof relating to such closed proceedings shall remain
84 confidential.

85 C2. *Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition*
86 *pursuant to § 16.1-278.8 and the juvenile is in a secure facility pending the appeal, the circuit court*
87 *shall hold a hearing on the merits of the case within 45 days of the filing of the appeal. Upon receipt of*
88 *the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order and a*
89 *copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt of*
90 *notice of an appeal. The time limitations shall be tolled during any period in which the juvenile has*
91 *escaped from custody. A juvenile held continuously in secure detention shall be released from*
92 *confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal.*
93 *The circuit court may extend the time limitations for a reasonable period of time based upon good*
94 *cause shown, provided the basis for such extension is recorded in writing and filed among the papers of*
95 *the proceedings.*

96 C. *An appeal of the case to the Court of Appeals shall take precedence on the docket of the court.*

97 D. When an appeal is taken in a case involving termination of parental rights brought under
98 § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the
99 perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the
100 docket of the Court.

101 E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction
102 of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an
103 appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal
104 is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in
105 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

106 F. In all other cases on appeal, proceedings in the circuit court shall conform to the equity practice
107 where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion
108 of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to
109 § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the
110 circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

111 G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee
112 could have been assessed in the juvenile and domestic relations court and shall be collected in the
113 circuit court.

114 H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic
115 relations district court except for that portion of any order or judgment establishing a support arrearage
116 or suspending payment of support during pendency of an appeal. In cases involving support, no appeal
117 shall be allowed until the party applying for the same or someone for him gives bond, in an amount and
118 with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment
119 as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment
120 of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a
121 finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations

district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal. An appeal will not be perfected unless such appeal bond as may be required is filed within ~~thirty~~ 30 days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal.

This subsection shall not apply to release on bail pursuant to other subsections of this section or § 16.1-298.

I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter.

J. In any case which has been referred or transferred from a circuit court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had been referred or transferred.