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HOUSE BILL NO. 2529

Offered January 12, 2005

Prefiled January 12, 2005

A BILL to amend and reenact §§ 16.1-269.2 and 16.1-272 of the Code of Virginia, relating to probation and parole; notice of transfer hearing; court order for supervision.

Patron—Melvin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-269.2 and 16.1-272 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-269.2. Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the transfer hearing provided for under § 16.1-269.1 shall not be admissible against him over objection in any criminal proceedings following the transfer, except for purposes of impeachment.

B. Prior to a transfer hearing pursuant to subsection A of § 16.1-269.1, a study and report to the court, in writing, relevant to the factors set out in subdivision A 4 of § 16.1-269.1, as well as an assessment of any affiliation with a youth gang as defined in § 16.1-299.2, shall be made by the probation services or other qualified agency designated by the court. *Upon motion of the attorney for the Commonwealth for a transfer hearing pursuant to subsection A of § 16.1-269.1, the court shall provide notification to the designated probation services or other qualified agency of the need for a transfer report.* Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. The court shall not consider the report until a finding has been made concerning probable cause. If the court so orders, the study and report may be expanded to include matters provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the hearing, whether or not the juvenile court decides to retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the juvenile court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

§ 16.1-272. Power of circuit court over juvenile offender.

A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided with regard to sentencing. Upon a finding of guilty of any charge other than capital murder, the court shall fix the sentence without the intervention of a jury.

1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to be served in the same manner as provided for adults be suspended conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case including, but not limited to, commitment under subdivision 14 of § 16.1-278.8 or § 16.1-285.1.

2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

3. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the juvenile court.

B. ~~If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the juvenile on probation, the juvenile may be supervised by a juvenile probation officer.~~ *If the court orders supervision at the time the court imposes sentence, the court shall designate whether supervision shall be provided by either a probation and parole district established pursuant to*

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59 § 53.1-141 or by a court service unit established pursuant to § 16.1-235. If a juvenile is convicted and
60 the court orders that the juvenile serve a portion of the sentence in the same manner as may be imposed
61 in a juvenile court upon disposition of a delinquency case and the remainder of such sentence in the
62 same manner as provided for adults, the court shall order the juvenile portion of the sentence to be
63 supervised by a court service unit established pursuant to § 16.1-235 and the adult portion to be
64 supervised by a probation and parole district established pursuant to § 53.1-141.

65 C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under
66 the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ 18.2-61,
67 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the
68 victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10,
69 subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by
70 § 19.2-390 to the Sex Offender and Crimes Against Minors Registry established pursuant to Chapter 9
71 (§ 9.1-900 et seq.) of Title 9.1.

72 D. If the court sentences the juvenile as a juvenile under this chapter, the clerk shall provide a copy
73 of the court's final order or judgment to the court service unit in the same locality as the juvenile court
74 to which the case had been transferred.