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HOUSE BILL NO. 911

Offered January 13, 2010

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A *BILL to amend and reenact §§ 16.1-269.1 and 16.1-269.6 of the Code of Virginia, relating to transfers of juveniles to circuit court; ancillary charges.*

Patron—Bell, Robert B.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-269.1 and 16.1-269.6 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

A. Except as provided in subsections B and C, if a juvenile ~~fourteen~~ 14 years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate circuit court shall *include all ancillary charges and shall be* subject to the following conditions:

1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent, guardian, legal custodian or other person standing in loco parentis; or attorney;

2. The juvenile court finds that probable cause exists to believe that the juvenile committed the delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an adult;

3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the evidence; and

4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the following factors:

a. The juvenile's age;

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

c. Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation;

d. The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems for dealing with the juvenile's problems;

e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the number and nature of previous contacts with juvenile or circuit 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 alleged offense is part of a repetitive pattern of similar adjudicated offenses;

f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional entity in this or any other jurisdiction;

g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional maturity; and

j. The juvenile's physical condition and physical maturity.

No transfer decision shall be precluded or reversed on the grounds that the court failed to consider

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59 any of the factors specified in subdivision A 4 of this section.

60 B. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~fourteen~~ 14 years of
61 age or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40, or aggravated
62 malicious wounding in violation of § 18.2-51.2.

63 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~fourteen~~ 14 years of
64 age or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of
65 § 18.2-41, abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious
66 wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of
67 § 18.2-54.1, adulteration of products in violation of § 18.2-54.2, robbery in violation of § 18.2-58 or
68 carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of
69 § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2, provided the attorney for the
70 Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall
71 be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then
72 represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis
73 with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the
74 Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification
75 of the charge to the grand jury, he may proceed as provided in subsection A.

76 D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the
77 juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification
78 shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this
79 subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and
80 ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

81 If the court does not find probable cause to believe that the juvenile has committed the violent
82 juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by
83 dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the
84 circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney
85 for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

86 If the court finds that the juvenile was not fourteen years of age or older at the time of the alleged
87 commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have
88 not been met, the case shall proceed as otherwise provided for by law.

89 E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile
90 court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the
91 Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

92 § 16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and
93 appeals.

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

102 B. The circuit court, when practicable, shall, within 45 days after receipt of the case from the
103 juvenile court pursuant to subsection A of § 16.1-269.1, (i) if either the juvenile or the attorney for the
104 Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and
105 conduct a hearing to take further evidence on the issue of transfer, to determine if there has been
106 substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the
107 juvenile court had sufficient evidence to find probable cause; and (ii) enter an order either remanding
108 the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an
109 indictment *for the offense charged and any ancillary charge*. A juvenile held continuously in secure
110 detention shall be released from confinement if there is no hearing on the merits of his case within 45
111 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable
112 period of time based upon good cause shown, provided the basis for such extension is recorded in
113 writing and filed among the papers of the proceedings. Upon advising the attorney for the
114 Commonwealth that he may seek an indictment *for the offense charged and any ancillary charge*, the
115 circuit court may issue an order transferring the juvenile from the juvenile detention facility to an
116 appropriate local correctional facility where the juvenile need no longer be entirely separate and
117 removed from adults, unless, upon motion of counsel, good cause is shown for placement of the juvenile
118 pursuant to the limitations of subdivision E (i), (ii), and (iii) of § 16.1-249. However, in cases where a
119 charge has been certified by the juvenile court to the grand jury pursuant to subsection B or C of
120 § 16.1-269.1, the attorney for the Commonwealth may seek an indictment upon such charge and any

121 ancillary charge without obtaining an order of the circuit court advising him that he may do so.

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

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

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

139 F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or
140 § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included
141 as applying to the provisions of § 19.2-243.