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SENATE BILL NO. 259

Senate Amendments in [] — January 27, 2010

A *BILL to amend and reenact §§ 16.1-249, 16.1-269.5, and 16.1-269.6 of the Code of Virginia, relating to places of confinement for juveniles.*

Patron Prior to Engrossment—Senator Lucas

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-249, 16.1-269.5, and 16.1-269.6 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-249. Places of confinement for juveniles.

A. If it is ordered that a juvenile remain in detention or shelter care pursuant to § 16.1-248.1, such juvenile may be detained, pending a court hearing, in the following places:

1. An approved foster home or a home otherwise authorized by law to provide such care;

2. A facility operated by a licensed child welfare agency;

3. If a juvenile is alleged to be delinquent, in a detention home or group home approved by the Department;

4. Any other suitable place designated by the court and approved by the Department;

5. To the extent permitted by federal law, a separate juvenile detention facility located upon the site of an adult regional jail facility established by any county, city or any combination thereof constructed after 1994, approved by the Department of Juvenile Justice and certified by the Board of Juvenile Justice for the holding and detention of juveniles.

B. No juvenile shall be detained or confined in any jail or other facility for the detention of adult offenders or persons charged with crime except as provided in subsection D, E, F or G of this section.

C. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a juvenile who is or appears to be under the age of 18 years is received at the facility, and shall deliver him to the court upon request, or transfer him to a detention facility designated by the court.

D. When a case is transferred to the circuit court in accordance with the provisions of subsection A of § 16.1-269.1 and an order is entered by the circuit court in accordance with § 16.1-269.6, or in accordance with the provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the district court, or when the district court has certified a charge to the grand jury pursuant to subsection B or C of § 16.1-269.1, the juvenile, if in confinement, *shall be placed in a juvenile facility, and if in the judgment of the custodian the juvenile has demonstrated that he is a threat to the security or safety of the other juveniles detained or the staff of the home or the facility, based on facts other than [solely] the offense with which he is charged, the judge shall determine whether such juvenile* may be transferred to a jail or other facility for the detention of adults and need no longer be entirely separate and removed from adults.

E. If, in the judgment of the custodian, a juvenile has demonstrated that he is a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the judge shall determine whether such juvenile should be transferred to another juvenile facility or, if the child is 14 years of age or older, a jail or other facility for the detention of adults; provided, that (i) the detention is in a room or ward entirely separate and removed from adults, (ii) adequate supervision is provided, and (iii) the facility is approved by the State Board of Corrections for detention of juveniles.

F. If, in the judgment of the custodian, it has been demonstrated that the presence of a juvenile in a facility creates a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the custodian may transfer the juvenile to another juvenile facility, or, if the child is 14 years of age or older, a jail or other facility for the detention of adults pursuant to the limitations of clauses (i), (ii) and (iii) of subsection E for a period not to exceed six hours prior to a court hearing and an additional six hours after the court hearing unless a longer period is ordered pursuant to subsection E.

G. If a juvenile 14 years of age or older is charged with an offense which, if committed by an adult, would be a felony or Class 1 misdemeanor, and the judge or intake officer determines that secure detention is needed for the safety of the juvenile or the community, such juvenile may be detained for a period not to exceed six hours prior to a court hearing and six hours after the court hearing in a temporary lock-up room or ward for juveniles while arrangements are completed to transfer the juvenile to a juvenile facility. Such room or ward may be located in a building which also contains a jail or other facility for the detention of adults, provided (i) such room or ward is totally separate and removed

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60 from adults or juveniles transferred to the circuit court pursuant to Article 7 (§ 16.1-269.1 et seq.) of
61 this chapter, (ii) constant supervision is provided, and (iii) the facility is approved by the State Board of
62 Corrections for the detention of juveniles. The State Board of Corrections is authorized and directed to
63 prescribe minimum standards for temporary lock-up rooms and wards based on the requirements set out
64 in this subsection.

65 G1. Any juvenile who has been ordered detained in a secure detention facility pursuant to
66 § 16.1-248.1 may be held incident to a court hearing (i) in a court holding cell for a period not to
67 exceed six hours provided the juvenile is entirely separate and removed from detained adults or (ii) in a
68 nonsecure area provided constant supervision is provided.

69 H. If a judge, intake officer or magistrate orders the predispositional detention of persons 18 years of
70 age or older, such detention shall be in an adult facility; however, if the predispositional detention is
71 ordered for a violation of the terms and conditions of release from a juvenile correctional center, the
72 judge, intake officer or magistrate may order such detention be in a juvenile facility.

73 I. The Departments of Corrections, Juvenile Justice and Criminal Justice Services shall assist the
74 localities or combinations thereof in implementing this section and ensuring compliance herewith.

75 § 16.1-269.5. Placement of juvenile.

76 The juvenile court may order placement of the transferred juvenile in either a local correctional
77 facility as approved by the State Board of Corrections pursuant to the limitations of subsections *D* and
78 *E* of § 16.1-249 or a juvenile detention facility.

79 § 16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and
80 appeals.

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

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

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

121 D. The judge of the circuit court who reviewed the case after receipt from the juvenile court shall

122 not, over the objection of any interested party, preside over the trial of such charge or charges.
123 E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not
124 made before arraignment.
125 F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or
126 § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included
127 as applying to the provisions of § 19.2-243.

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