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SENATE BILL NO. 389

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact § 16.1-269.1 of the Code of Virginia, relating to transfer and trial as adults in circuit court of juveniles charged with certain offenses.

Patron—McDougle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-269.1 of the Code of Virginia is 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 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~~ 20 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 any of the factors specified in subdivision A 4 of this section.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile ~~fourteen~~ 14 years of

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59 age or older is charged with murder in violation of §§ 18.2-31, 18.2-32, or § 18.2-40, ~~or~~ aggravated
60 malicious wounding in violation of § 18.2-51.2, *or an act of violence as defined in § 19.2-297.1 if the*
61 *juvenile has been previously adjudicated delinquent for an offense defined as act of violence in*
62 *§ 19.2-297.1.*

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, *gang participation in violation of § 18.2-46.2*, abduction in violation of § 18.2-48, malicious
66 wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in violation of
67 § 18.2-51.1, felonious poisoning in violation of § 18.2-54.1, adulteration of products in violation of
68 § 18.2-54.2, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape in violation
69 of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 ~~or~~, object sexual penetration in violation of
70 § 18.2-67.2, *manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell,*
71 *give or distribute a controlled substance or an imitation controlled substance in violation of § 18.2-248*
72 *if the juvenile has been previously adjudicated delinquent of violating § 18.2-248, manufacturing, selling,*
73 *giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine*
74 *in violation of § 18.2-248.03 if the juvenile has been previously adjudicated delinquent of violating*
75 *§ 18.2-248.03, felonious selling, giving, distributing or possessing with intent to distribute marijuana in*
76 *violation of § 18.2-248.1 if the juvenile has been previously adjudicated delinquent of § 18.2-248.1, or a*
77 *felony offense of manufacturing, selling, giving, distributing, or possessing with intent to manufacture,*
78 *sell, give, or distribute anabolic steroids in violation of § 18.2-248.5 if the juvenile has been previously*
79 *adjudicated delinquent of § 18.2-248.5*, provided the attorney for the Commonwealth gives written notice
80 of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed
81 or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the
82 juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at
83 least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to
84 give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand
85 jury, he may proceed as provided in subsection A.

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

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

96 If the court finds that the juvenile was not ~~fourteen~~ 14 years of age or older at the time of the
97 alleged commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection
98 A have not been met, the case shall proceed as otherwise provided for by law.

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

102 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
103 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
104 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
105 **781 of the Acts of Assembly of 2009 requires the Virginia Criminal Sentencing Commission to**
106 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
107 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
108 **Department of Juvenile Justice.**