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HOUSE BILL NO. 1198

Offered January 19, 2012

A *BILL to amend and reenact § 16.1-269.6 of the Code of Virginia, relating to juvenile's right to appeal transfer to circuit court.*

Patron—Herring

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-269.6 of the Code of Virginia is 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 *or the certification or indictment of an offense listed in subsection C of 16.1-269.1 and ancillary charges pursuant to subsection D 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. 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, when practicable, shall, within 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. 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. *Cases where the attorney for the Commonwealth sought an indictment upon a charge and any ancillary charge for an offense listed in subsection C of § 16.1-269.1 without obtaining an order of the circuit court advising him that he may do so when such charge or charges were certified by the juvenile court to the grand jury pursuant to subsection D of § 16.1-269.1 shall be subject to review pursuant to subsection B1.*

B1. Within 45 days after receipt of the case from the juvenile court for an offense listed in subsection C of § 16.1-269.1 and any ancillary charge pursuant to subsection D of § 16.1-269.1, if either the juvenile or the attorney for the Commonwealth has appealed the juvenile court's certification or the direct indictment, the circuit court shall conduct a hearing to take further evidence to determine by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the circuit court and remand the case back to the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the circuit court, the court shall consider, but not be limited to, the factors in subdivision A 4 of § 16.1-269.1, including whether remanding jurisdiction would not depreciate the seriousness of the offense.

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

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59 allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and
60 domestic relations district court if the defendant were an adult. Upon receipt of the order terminating the
61 juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending
62 petitions of delinquency for proceedings in the appropriate general district court.

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

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

67 F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or §
68 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included as
69 applying to the provisions of § 19.2-243.