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SENATE BILL NO. 1263

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 28, 2019)

(Patron Prior to Substitute—Senator Saslaw)

A BILL to amend and reenact §§ 16.1-269.1, 16.1-269.3, 16.1-284.1, and 16.1-285.1, of the Code of Virginia, relating to juveniles; trial as adult for felony larceny offenses.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-269.1, 16.1-269.3, 16.1-284.1, and 16.1-285.1 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 14 years of age or older at the time of an alleged offense is charged with an offense ~~which~~ *that* would be a felony if committed by an adult, *except for a juvenile 14 or 15 years of age charged with a felony larceny offense*, 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~~ *that* 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 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 intellectual disability 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 4.

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

60 wounding in violation of § 18.2-51.2.

61 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 years of age or
62 older is charged with murder in violation of § 18.2-33; felonious injury by mob in violation of
63 § 18.2-41; abduction in violation of § 18.2-48; malicious wounding in violation of § 18.2-51; malicious
64 wounding of a law-enforcement officer in violation of § 18.2-51.1; felonious poisoning in violation of
65 § 18.2-54.1; adulteration of products in violation of § 18.2-54.2; robbery in violation of § 18.2-58 or
66 carjacking in violation of § 18.2-58.1; rape in violation of § 18.2-61; forcible sodomy in violation of
67 § 18.2-67.1; object sexual penetration in violation of § 18.2-67.2; manufacturing, selling, giving,
68 distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or
69 an imitation controlled substance in violation of § 18.2-248 if the juvenile has been previously
70 adjudicated delinquent on two or more occasions of violating § 18.2-248 provided the adjudications
71 occurred after the juvenile was at least 14 years of age; manufacturing, selling, giving, distributing, or
72 possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of
73 § 18.2-248.03 if the juvenile has been previously adjudicated delinquent on two or more occasions of
74 violating § 18.2-248.03 provided the adjudications occurred after the juvenile was at least 14 years of
75 age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture,
76 sell, give, or distribute anabolic steroids in violation of § 18.2-248.5 if the juvenile has been previously
77 adjudicated delinquent on two or more occasions of violating § 18.2-248.5 provided the adjudications
78 occurred after the juvenile was at least 14 years of age, provided the attorney for the Commonwealth
79 gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with
80 the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented
81 by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect
82 to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the
83 Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification
84 of the charge to the grand jury, he may proceed as provided in subsection A.

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

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

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

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

101 **§ 16.1-269.3. Retention by juvenile court; appeal.**

102 If a case is not transferred following a transfer hearing or is not certified following a probable cause
103 hearing, the judge who conducted the hearing shall not, over the objection of any interested party,
104 preside at the adjudicatory hearing on the petition, but rather it shall be presided over by another judge
105 of that court. If the attorney for the Commonwealth deems it to be in the public interest, and the
106 juvenile is ~~fourteen~~ 14 years of age or older, *except for a juvenile 14 or 15 years of age charged with a*
107 *felony larceny offense*, he may, within ~~ten~~ 10 days after the juvenile court's final decision to retain the
108 case in accordance with subsection A of § 16.1-269.1, file a notice of appeal of the decision to the
109 appropriate circuit court. A copy of such notice shall be furnished at the same time to the counsel for
110 the juvenile.

111 **§ 16.1-284.1. Placement in secure local facility.**

112 A. If a juvenile 14 years of age or older is found to have committed an offense ~~which~~ *that* if
113 committed by an adult would be punishable by confinement in a state or local correctional facility as
114 defined in § 53.1-1, *except for a juvenile 14 or 15 years of age charged with a felony larceny offense*,
115 and the court determines (i) that the juvenile has not previously been and is not currently adjudicated
116 delinquent of a violent juvenile felony or found guilty of a violent juvenile felony, (ii) that the juvenile
117 has not been released from the custody of the Department within the previous 18 months, (iii) that the
118 interests of the juvenile and the community require that the juvenile be placed under legal restraint or
119 discipline, and (iv) that other placements authorized by this title will not serve the best interests of the
120 juvenile, then the court may order the juvenile confined in a detention home or other secure facility for
121 juveniles for a period not to exceed six months from the date the order is entered, for a single offense

or multiple offenses. However, if the single offense or multiple offenses, which if committed by an adult would be punishable as a felony or a Class 1 misdemeanor, caused the death of any person, then the court may order the juvenile confined in a detention home or other secure facility for juveniles for a period not to exceed 12 months from the date the order is entered.

The period of confinement ordered may exceed 30 calendar days if the juvenile has had an assessment completed by the secure facility to which he is ordered concerning the appropriateness of the placement.

B. If the period of confinement in a detention home or other secure facility for juveniles is to exceed 30 calendar days, and the juvenile is eligible for commitment pursuant to subdivision A 14 of § 16.1-278.8, then the court shall order the juvenile committed to the Department, but suspend such commitment. In suspending the commitment to the Department as provided for in this subsection, the court shall specify conditions for the juvenile's satisfactory completion of one or more community or facility based treatment programs as may be appropriate for the juvenile's rehabilitation.

C. During any period of confinement ~~which~~ *that* exceeds 30 calendar days ordered pursuant to this section, the court shall conduct a mandatory review hearing at least once during each 30 days and at such other times upon the request of the juvenile's probation officer, for good cause shown. If it appears at such hearing that the purpose of the order of confinement has been achieved, the juvenile shall be released on probation for such period and under such conditions as the court may specify and remain subject to the order suspending commitment to the State Department of Juvenile Justice. If the juvenile's commitment to the Department has been suspended as provided in subsection B ~~of this section~~, and if the court determines at the first or any subsequent review hearing that the juvenile is consistently failing to comply with the conditions specified by the court or the policies and program requirements of the facility, then the court shall order that the juvenile be committed to the State Department of Juvenile Justice. If the court determines at the first or any subsequent review hearing that the juvenile is not actively involved in any community facility based treatment program through no fault of his own, then the court shall order that the juvenile be released under such conditions as the court may specify subject to the suspended commitment.

C1. The appearance of the juvenile before the court for a hearing pursuant to subsection C may be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by facsimile process. A facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

D. A juvenile may only be ordered confined pursuant to this section to a facility in compliance with standards established by the State Board for such placements. Standards for these facilities shall require juveniles placed pursuant to this section for a period ~~which~~ *that* exceeds 30 calendar days be provided separate services for their rehabilitation, consistent with the intent of this section.

E. The Department of Juvenile Justice shall assist the localities or combinations thereof in implementing this section consistent with the statewide plan required by § 16.1-309.4 and pursuant to standards promulgated by the State Board, in order to ensure the availability and reasonable access of each court to the facilities the use of which is authorized by this section.

§ 16.1-285.1. Commitment of serious offenders.

A. In the case of a juvenile ~~fourteen~~ 14 years of age or older who has been found guilty of an offense ~~which~~ *that* would be a felony if committed by an adult, *except for a juvenile 14 or 15 years of age charged with a felony larceny offense*, and either (i) the juvenile is on parole for an offense ~~which~~ *that* would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense ~~which~~ *that* would be a felony if committed by an adult within the immediately preceding ~~twelve~~ 12 months, (iii) the felony offense is punishable by a term of confinement of greater than ~~twenty~~ 20 years if the felony was committed by an adult, or (iv) the juvenile has been previously adjudicated delinquent for an offense which if committed by an adult would be a felony punishable by a term of confinement of ~~twenty~~ 20 years or more, and the circuit court, or the juvenile or family court, as the case may be, finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, then the court may order the juvenile committed to the Department of Juvenile Justice for placement in a juvenile correctional center for the period of time prescribed pursuant to this section.

Alternatively, in order to determine if a juvenile, transferred from a juvenile and domestic relations district court to a circuit court pursuant to § 16.1-269.1, appropriately qualifies for commitment pursuant

183 to this section, notwithstanding the inapplicability of the qualification criteria set forth in clauses (i)
184 through (iv), the circuit court may consider the commitment criteria set forth in subdivisions B 1, 2, and
185 3 of subsection B as well as other components of the juvenile's life history and, if upon such
186 consideration in the opinion of the court the needs of the juvenile and the interests of the community
187 would clearly best be served by commitment hereunder, may so commit the juvenile.

188 B. Prior to committing any juvenile pursuant to this section, the court shall consider:

189 1. The juvenile's age;

190 2. The seriousness and number of the present offenses, including (i) whether the offense was
191 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the offense was
192 against persons or property, with greater weight being given to offenses against persons, especially if
193 death or injury resulted; (iii) whether the offense involved the use of a firearm or other dangerous
194 weapon by brandishing, displaying, threatening with or otherwise employing such weapon; and (iv) the
195 nature of the juvenile's participation in the alleged offense;

196 3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the
197 number and nature of previous contacts with courts, (ii) the number and nature of prior periods of
198 probation, (iii) the number and nature of prior commitments to juvenile correctional centers, (iv) the
199 number and nature of previous residential and community-based treatments, (v) whether previous
200 adjudications and commitments were for delinquent acts that involved the infliction of serious bodily
201 injury, and (vi) whether the offense is part of a repetitive pattern of similar adjudicated offenses; and

202 4. The Department's estimated length of stay.

203 Such commitment order must be supported by a determination that the interests of the juvenile and
204 community require that the juvenile be placed under legal restraint or discipline and that the juvenile is
205 not a proper person to receive treatment or rehabilitation through other juvenile programs or facilities.

206 C. In ordering commitment pursuant to this section, the court shall specify a period of commitment
207 not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first. The court
208 may also order a period of determinate or indeterminate parole supervision to follow the commitment
209 but the total period of commitment and parole supervision shall not exceed seven years or the juvenile's
210 twenty-first birthday, whichever occurs first.

211 D. Upon receipt of a juvenile committed under the provisions of this section, the Department shall
212 evaluate the juvenile for the purpose of considering placement of the juvenile in an appropriate juvenile
213 correctional center for the time prescribed by the committing court. Such a placement decision shall be
214 made based on the availability of treatment programs at the facility; the level of security at the facility;
215 the offense for which the juvenile has been committed; and the welfare, age and gender of the juvenile.

216 E. The court ~~which~~ that commits the juvenile to the Department under this section shall have
217 continuing jurisdiction over the juvenile throughout his commitment. The continuing jurisdiction of the
218 court shall not prevent the Department from removing the juvenile from a juvenile correctional center
219 without prior court approval for the sole purposes of routine or emergency medical treatment, routine
220 educational services, or family emergencies.

221 F. Any juvenile committed under the provisions of this section shall not be released at a time earlier
222 than that specified by the court in its dispositional order except as provided for in § 16.1-285.2. The
223 Department may petition the committing court for a hearing as provided for in § 16.1-285.2 for an
224 earlier release of the juvenile when good cause exists for an earlier release. In addition, the Department
225 shall petition the committing court for a determination as to the continued commitment of each juvenile
226 sentenced under this section at least ~~sixty~~ 60 days prior to the second anniversary of the juvenile's date
227 of commitment and ~~sixty~~ 60 days prior to each annual anniversary thereafter.