

20100082D

HOUSE BILL NO. 477

Offered January 8, 2020

Prefiled January 3, 2020

A BILL to amend and reenact §§ 16.1-241, 16.1-269.1, 16.1-269.2, and 16.1-277.1 of the Code of Virginia, relating to juveniles; trial as adult.

Patrons—Guzman, Hudson, Hope, Jenkins and Samirah

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 16.1-269.1, 16.1-269.2, and 16.1-277.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244;

6. Who is charged with a traffic infraction as defined in § 46.2-100; or

7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 16 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 16 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

INTRODUCED

HB477

59 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
60 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
61 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
62 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
63 be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family
64 members. A party with a legitimate interest shall not include any person (i) whose parental rights have
65 been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives
66 from or through a person whose parental rights have been terminated by court order, either voluntarily
67 or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood
68 relatives and family members, if the child subsequently has been legally adopted, except where a final
69 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of
70 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another
71 state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was
72 conceived as a result of such violation. The authority of the juvenile court to consider a petition
73 involving the custody of a child shall not be proscribed or limited where the child has previously been
74 awarded to the custody of a local board of social services.

75 A1. Making specific findings of fact required by state or federal law to enable a child to apply for or
76 receive a state or federal benefit.

77 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
78 provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental
79 illness or judicial certification of eligibility for admission to a training center for persons with
80 intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.
81 Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general
82 district court.

83 C. Except as provided in subsections D and H, judicial consent to such activities as may require
84 parental consent may be given for a child who has been separated from his parents, guardian, legal
85 custodian or other person standing in loco parentis and is in the custody of the court when such consent
86 is required by law.

87 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married
88 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person
89 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person
90 standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown,
91 (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such
92 consent or provide such treatment when requested by the judge to do so.

93 E. Any person charged with deserting, abandoning or failing to provide support for any person in
94 violation of law.

95 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

96 1. Who has been abused or neglected;

97 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817
98 or is otherwise before the court pursuant to subdivision A 4; or

99 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
100 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
101 conduct of the child complained of in the petition.

102 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other
103 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services
104 that are required by law to be provided for that child or such child's parent, guardian, legal custodian or
105 other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not
106 exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

107 H. Judicial consent to apply for a work permit for a child when such child is separated from his
108 parents, legal guardian or other person standing in loco parentis.

109 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or
110 neglect of children or with any violation of law that causes or tends to cause a child to come within the
111 purview of this law, or with any other offense against the person of a child. In prosecution for felonies
112 over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is
113 probable cause.

114 J. All offenses in which one family or household member is charged with an offense in which
115 another family or household member is the victim and all offenses under § 18.2-49.1.

116 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
117 determining whether or not there is probable cause. Any objection based on jurisdiction under this
118 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
119 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it
120 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for

challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.).

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. [Repealed.]

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to an adoption when the consent to an adoption is executed pursuant to the laws of another state and the laws of that state provide for the execution of consent to an adoption in the court of the Commonwealth.

W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the

182 court denies an order authorizing an abortion without consent or without notice. Any such appeal shall
183 be heard and decided no later than five days after the appeal is filed. The time periods required by this
184 subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent
185 or without notice shall not be subject to appeal.

186 No filing fees shall be required of the minor at trial or upon appeal.

187 If either the original court or the circuit court fails to act within the time periods required by this
188 subsection, the court before which the proceeding is pending shall immediately authorize a physician to
189 perform the abortion without consent of or notice to an authorized person.

190 Nothing contained in this subsection shall be construed to authorize a physician to perform an
191 abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult
192 woman.

193 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent
194 has been obtained or the minor delivers to the physician a court order entered pursuant to this section
195 and the physician or his agent provides such notice as such order may require. However, neither consent
196 nor judicial authorization nor notice shall be required if the minor declares that she is abused or
197 neglected and the attending physician has reason to suspect that the minor may be an abused or
198 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with
199 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the
200 facts justifying the exception in the minor's medical record.

201 For purposes of this subsection:

202 "Authorization" means the minor has delivered to the physician a notarized, written statement signed
203 by an authorized person that the authorized person knows of the minor's intent to have an abortion and
204 consents to such abortion being performed on the minor.

205 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or
206 (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with
207 whom the minor regularly and customarily resides and who has care and control of the minor. Any
208 person who knows he is not an authorized person and who knowingly and willfully signs an
209 authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

210 "Consent" means that (i) the physician has given notice of intent to perform the abortion and has
211 received authorization from an authorized person, or (ii) at least one authorized person is present with
212 the minor seeking the abortion and provides written authorization to the physician, which shall be
213 witnessed by the physician or an agent thereof. In either case, the written authorization shall be
214 incorporated into the minor's medical record and maintained as a part thereof.

215 "Medical emergency" means any condition which, on the basis of the physician's good faith clinical
216 judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate
217 abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial
218 and irreversible impairment of a major bodily function.

219 "Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual
220 notice of his intention to perform such abortion to an authorized person, either in person or by
221 telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his
222 agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person
223 by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at
224 least 72 hours prior to the performance of the abortion.

225 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical
226 procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

227 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid
228 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any
229 of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her
230 parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an
231 order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

232 X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor
233 children.

234 Y. Petitions involving minors filed pursuant to § 32.1-45.1 relating to obtaining a blood specimen or
235 test results.

236 The ages specified in this law refer to the age of the child at the time of the acts complained of in
237 the petition.

238 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of
239 any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of
240 § 17.1-272, or subsection B, D, M, or R.

241 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of
242 subsection W shall be guilty of a Class 3 misdemeanor.

243 **§ 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 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 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 16 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 wounding in violation of § 18.2-51.2.

C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 16 years of age or older is charged with murder in violation of § 18.2-33; felonious injury by mob in violation of § 18.2-41; abduction in violation of § 18.2-48; malicious wounding in violation of § 18.2-51; malicious wounding of a law-enforcement officer in violation of § 18.2-51.1; felonious poisoning in violation of § 18.2-54.1; adulteration of products in violation of § 18.2-54.2; robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1; rape in violation of § 18.2-61; forcible sodomy in violation of § 18.2-67.1; object sexual penetration in violation of § 18.2-67.2; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an imitation controlled substance in violation of § 18.2-248 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248 provided the adjudications occurred after the juvenile was at least 14 16 years of age; manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of § 18.2-248.03 if the juvenile has been previously adjudicated delinquent on two or more occasions of

violating § 18.2-248.03 provided the adjudications occurred after the juvenile was at least 14 16 years of age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in violation of § 18.2-248.5 if the juvenile has been previously adjudicated delinquent on two or more occasions of violating § 18.2-248.5 provided the adjudications occurred after the juvenile was at least 14 16 years of age, provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. *Prior to giving written notice of his intent to proceed pursuant to this subsection, the attorney for the Commonwealth shall submit a written request to the director of the court services unit to complete a report as described in subsection B of § 16.1-269.2. The report shall be filed with the court and mailed or delivered to (i) the attorney for the Commonwealth and (ii) counsel for the juvenile, or, if the juvenile is not represented by counsel, to the juvenile and a parent, guardian, or other person standing in loco parentis with respect to the juvenile, within 21 days of the date of the written request. After reviewing the report, if the attorney for the Commonwealth still intends to proceed pursuant to this subsection, he shall then provide the written notice of such intent, which shall include affirmation that he reviewed the report.* The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian, or other person standing in loco parentis with respect to the juvenile, at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

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

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

If the court finds that the juvenile was not 14 16 years of age or older at the time of the alleged commission of the offense or that the conditions specified in subdivision A 1, 2, or 3 have not been met, the case shall proceed as otherwise provided for by law.

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

§ 16.1-269.2. Admissibility of statement; investigation and report; bail.

A. Statements made by the juvenile at the transfer hearing provided for under § 16.1-269.1 shall not be admissible against him over objection in any criminal proceedings following the transfer, except for purposes of impeachment.

B. Prior to a transfer hearing pursuant to subsection A of § 16.1-269.1, *or a preliminary hearing pursuant to subsection C of § 16.1-269.1*, a study and report to the court, in writing, relevant to the factors set out in subdivision A 4 of § 16.1-269.1, as well as an assessment of any affiliation with a criminal street gang as defined in § 18.2-46.1, shall be made by the probation services or other qualified agency designated by the court. Upon motion of the attorney for the Commonwealth for a transfer hearing pursuant to subsection A of § 16.1-269.1, the attorney for the Commonwealth shall provide notice to the designated probation services or other qualified agency of the need for a transfer report. Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and report and any other report or data concerning the juvenile which are available to the court. The court shall not consider the report until a finding has been made concerning probable cause. If the court so orders, the study and report may be expanded to include matters provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the hearing, whether or not the juvenile court decides to retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the juvenile court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

§ 16.1-277.1. Time limitation.

A. When a child is held continuously in secure detention, he shall be released from confinement if there is no adjudicatory or transfer hearing conducted by the court for the matters upon which he was detained within twenty-one days from the date he was first detained.

B. If a child is not held in secure detention or is released from same after having been confined, an adjudicatory or transfer hearing on the matters charged in the petition or petitions issued against him

shall be conducted within 120 days from the date the petition or petitions are filed.

C. When a child is held in secure detention after the completion of his adjudicatory hearing or is detained when the juvenile court has retained jurisdiction as a result of a transfer hearing, he shall be released from such detention if the disposition hearing is not completed within thirty days from the date of the adjudicatory or transfer hearing.

D. The time limitations provided for in this section shall be tolled during any period in which (i) the whereabouts of the child are unknown, (ii) the child has escaped from custody, ~~or~~ (iii) the child has failed to appear pursuant to a court order, *or (iv) a report is being prepared pursuant to the written request by the attorney for the Commonwealth in accordance with subsection C of § 16.1-269.1.* The limitations also may be extended by the court for a reasonable period of time based upon good cause shown, provided that the basis for such extension is recorded in writing and filed among the papers of the proceedings. For the purposes of this section, good cause includes, ~~but is not limited to,~~ extension of limitations necessary to obtain the presence of a witness to testify regarding the results of scientific analyses or examinations *and good cause shown by the director of the court service unit completing a report pursuant to subsection C of § 16.1-269.1 that additional time is needed for the completion of the report.*