

LD1673260

SENATE BILL NO. 305

Offered January 25, 1994

A BILL to amend and reenact § 16.1-269 of the Code of Virginia, as it is currently effective and as it may become effective, relating to transfer of juvenile cases for trial as an adult.

Patrons—Benedetti; Delegates: Hall and Rhodes

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-269 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

§ 16.1-269. (For effective date - See note) Transfer to other courts; when required; investigation and report; presentment to grand jury; bail.

A. If a child fifteen years of age or older is charged with an offense which, if committed by an adult, could be punishable by confinement in a state correctional facility, the court shall on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and, *except as provided in subsection A. 1*, may retain jurisdiction or transfer such child 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. The child was fifteen or more years of age at the time of the alleged commission of the offense.
2. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the child and his parent, guardian, legal custodian or other person standing in loco parentis or attorney.

3. The court finds:
a. There is probable cause to believe that the child committed the delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by an adult;

b. The child is not, in the opinion of the court, amenable to treatment or rehabilitation as a juvenile through available facilities, considering the nature of the present offense or such factors as the nature of the child's prior delinquency record, the nature of past treatment efforts and the nature of the child's response to past treatment efforts; provided, however, when the alleged delinquent act is armed robbery, rape as provided in § 18.2-61 or murder, or when the child has previously been tried as an adult and convicted of a felony and is presently alleged to have committed an act which would be a felony if committed by an adult, the court may certify the child without making the finding required by this subdivision;

c. The child is competent to stand trial. The child is presumed to be competent and the burden is on the party alleging the child is incompetent to rebut the presumption by a preponderance of the evidence; and

d. The interests of the community require that the child be placed under legal restraint or discipline.

A1. If a child thirteen years of age or older is charged with an offense which, if committed by an adult, could be punishable by confinement in a state correctional facility and which (i) resulted in the death or serious physical injury of another person or (ii) involved the use or display of a firearm or other deadly weapon, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and transfer the child 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. The child was thirteen or more years of age at the time of the alleged commission of the offense.
2. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the child and his parent, guardian, legal custodian or other person standing in loco parentis or attorney.*

3. The court finds there is probable cause to believe that the child committed the delinquent act resulting in injury or death or involving the use or display of a firearm or other deadly weapon as alleged which would be a felony if committed by an adult.

4. The court finds that the child is competent to stand trial. The child is presumed to be competent and the burden is on the party alleging the child is incompetent to rebut the presumption by a preponderance of the evidence.

B. Statements made by the child at the hearing under this section shall not be admissible against him over objection in the criminal proceedings following the transfer, except for purposes of impeachment.

C. Prior to the transfer hearing pursuant to subsection A, a study and report to the court, in writing, relevant to the facts in subdivisions 3 b and 3 c of subsection A of this section, shall be made by the probation services or a qualified agency designated by the court. Counsel for the child shall have full

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60 access to the study and report required by this subsection and any other report or data concerning the
61 child which are available to the court. The court shall not consider the report required by this subsection
62 until a finding has been made concerning probable cause as set forth in subdivision 3 a hereof. If the
63 court so orders, the study and written report may be enlarged to include the matters provided for in
64 § 16.1-273, whereupon it may also serve as the report required by such section, but on the condition that
65 it will not be submitted to the judge who will preside at any subsequent hearings except as provided for
66 by law.

67 D. If the case is not transferred *pursuant to subsection A*, the judge who conducted the hearing shall
68 not over objection of an interested party preside at the adjudicatory hearing on the petition, but rather it
69 shall be presided over by another judge for that court.

70 E. If the court, after a hearing *pursuant to subsection A* on whether the transfer should be made or
71 whether jurisdiction should be retained, decides to retain the case, and the attorney for the
72 Commonwealth deems it to be in the public interest, and the child is fifteen years of age or older and is
73 charged with an offense which, if committed by an adult, would be punishable by death or confinement
74 in a state correctional facility for life or a maximum period of twenty years or more than twenty years,
75 the attorney for the Commonwealth may notify the juvenile court, within ten days after the juvenile
76 court's final determination to retain the case, of his intention to seek a removal of the case to the proper
77 circuit court having criminal jurisdiction and a copy of such notice shall be furnished at the same time
78 to the counsel for such child. If the juvenile court transfers the case, the juvenile may, within ten days
79 of such decision, note an appeal of the decision to transfer to the circuit court, and a copy of the notice
80 shall be furnished at the same time to the attorney for the Commonwealth. Within three days after
81 receipt of either such notice, the judge of the juvenile court shall forward to the circuit court all papers
82 connected with the case, including the report required by this section, as well as a written order setting
83 forth the reasons for the juvenile court's opinion. The circuit court shall, within a reasonable period of
84 time after receipt of the case from the juvenile court, (i) examine all such papers, reports and orders and
85 (ii) conduct a hearing to take further evidence on the issue of transfer, to determine if there has been
86 compliance with this section, but without redetermining whether the juvenile court had sufficient
87 evidence to find probable cause, and enter an order either remanding the case to the juvenile court or
88 advising the attorney for the Commonwealth that he may seek an indictment. If the grand jury returns a
89 true bill upon such indictment the jurisdiction of the juvenile court as to such case shall terminate. The
90 judge of the circuit court who reviewed the case after receipt from the juvenile court shall not over the
91 objection of an interested party preside over the trial of such charge or charges.

92 F. After the completion of the hearing required by this section, whether or not the juvenile court
93 decides to retain jurisdiction over the child or to transfer such child for criminal proceedings in the
94 circuit court or the attorney for the Commonwealth notifies the juvenile court of his intention to seek a
95 removal of the case to the circuit court, the juvenile court shall set bail for the child in accordance with
96 Chapter 9 (§ 19.2-119 et seq.) of Title 19.2. After the case has been transferred or removed and the
97 grand jury returns a true bill upon such indictment the jurisdiction of the juvenile court as to such case
98 shall terminate.

99 § 16.1-269. (Delayed effective date - See notes) Transfer to other courts; when required; investigation
100 and report; presentment to grand jury; bail.

101 A. If a child fifteen years of age or older is charged with an offense which, if committed by an
102 adult, could be punishable by confinement in a state correctional facility, the court shall on motion of
103 the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and,
104 *except as provided in subsection A. 1*, may retain jurisdiction or transfer such child for proper criminal
105 proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by
106 an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

107 1. The child was fifteen or more years of age at the time of the alleged commission of the offense.

108 2. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the child and his parent,
109 guardian, legal custodian or other person standing in loco parentis or attorney.

110 3. The court finds:

111 a. There is probable cause to believe that the child committed the delinquent act as alleged or a
112 lesser included delinquent act which would be a felony if committed by an adult;

113 b. The child is not, in the opinion of the court, amenable to treatment or rehabilitation as a juvenile
114 through available facilities, considering the nature of the present offense or such factors as the nature of
115 the child's prior delinquency record, the nature of past treatment efforts and the nature of the child's
116 response to past treatment efforts; provided, however, when the alleged delinquent act is armed robbery,
117 rape as provided in § 18.2-61 or murder, or when the child has previously been tried as an adult and
118 convicted of a felony and is presently alleged to have committed an act which would be a felony if
119 committed by an adult, the court may certify the child without making the finding required by this
120 subdivision;

121 c. The child is competent to stand trial. The child is presumed to be competent and the burden is on

the party alleging the child is incompetent to rebut the presumption by a preponderance of the evidence; and

d. The interests of the community require that the child be placed under legal restraint or discipline.

A1. If a child thirteen years of age or older is charged with an offense which, if committed by an adult, could be punishable by confinement in a state correctional facility, and which (i) resulted in the death or serious physical injury of another or (ii) involved the use or display of a firearm or other deadly weapon, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and transfer the child 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. The child was thirteen or more years of age at the time of the alleged commission of the offense.

2. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the child and his parent, guardian, legal custodian or other person standing in loco parentis or attorney.

3. The court finds there is probable cause to believe that the child committed the delinquent act involving the use or display of a firearm or other deadly weapon as alleged which would be a felony if committed by an adult.

4. The court finds that the child is competent to stand trial. The child is presumed to be competent and the burden is on the party alleging the child is incompetent to rebut the presumption by a preponderance of the evidence.

B. Statements made by the child at the hearing under this section shall not be admissible against him over objection in the criminal proceedings following the transfer, except for purposes of impeachment.

C. Prior to the transfer hearing pursuant to subsection A, a study and report to the court, in writing, relevant to the facts in subdivisions 3 b and 3 c of subsection A of this section, shall be made by the probation services or a qualified agency designated by the court. Counsel for the child shall have full access to the study and report required by this subsection and any other report or data concerning the child which are available to the court. The court shall not consider the report required by this subsection until a finding has been made concerning probable cause as set forth in subdivision 3 a hereof. If the court so orders, the study and written report may be enlarged to include the matters provided for in § 16.1-273, whereupon it may also serve as the report required by such section, 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.

D. If the case is not transferred pursuant to subsection A, the judge who conducted the hearing shall not over objection of an interested party preside at the adjudicatory hearing on the petition, but rather it shall be presided over by another judge for that court.

E. If the court, after a hearing pursuant to subsection A, on whether the transfer should be made or whether jurisdiction should be retained, decides to retain the case, and the attorney for the Commonwealth deems it to be in the public interest, and the child is fifteen years of age or older and is charged with an offense which, if committed by an adult, would be punishable by death or confinement in a state correctional facility for life or a maximum period of twenty years or more than twenty years, the attorney for the Commonwealth may notify the family court, within ten days after the family court's final determination to retain the case, of his intention to seek a removal of the case to the proper circuit court having criminal jurisdiction and a copy of such notice shall be furnished at the same time to the counsel for such child. If the family court transfers the case, the juvenile may, within ten days of such decision, note an appeal of the decision to transfer to the circuit court, and a copy of the notice shall be furnished at the same time to the attorney for the Commonwealth. Within three days after receipt of either such notice, the judge of the family court shall forward to the circuit court all papers connected with the case, including the report required by this section, as well as a written order setting forth the reasons for the family court's opinion. The circuit court shall, within a reasonable period of time after receipt of the case from the family court, (i) examine all such papers, reports and orders and (ii) conduct a hearing to take further evidence on the issue of transfer, to determine if there has been compliance with this section, but without redetermining whether the family court had sufficient evidence to find probable cause, and enter an order either remanding the case to the family court or advising the attorney for the Commonwealth that he may seek an indictment. If the grand jury returns a true bill upon such indictment the jurisdiction of the family court as to such case shall terminate. The judge of the circuit court who reviewed the case after receipt from the family court shall not over the objection of an interested party preside over the trial of such charge or charges.

F. After the completion of the hearing required by this section, whether or not the family court decides to retain jurisdiction over the child or to transfer such child for criminal proceedings in the circuit court or the attorney for the Commonwealth notifies the family court of his intention to seek a removal of the case to the circuit court, the family court shall set bail for the child in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2. After the case has been transferred or removed and the

183 grand jury returns a true bill upon such indictment the jurisdiction of the family court as to such case
184 shall terminate.
185 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
186 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
187 **is \$1,650,700.**