

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 451

An Act to amend and reenact § 16.1-250 of the Code of Virginia, relating to two-way electronic video and audio communication for detention hearings.

[H 2004]

Approved March 20, 1995

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-250 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-250. Procedure for detention hearing.

A. When a child has been taken into immediate custody and not released as provided in § 16.1-247 or § 16.1-248.1, such child shall ~~be brought~~ *appear* before a judge on the next day on which the court sits within the county or city wherein the charge against the child is pending. In the event the court does not sit within the county or city on the following day, such child shall ~~be brought~~ *appear* before a judge within a reasonable time, not to exceed seventy-two hours, after he has been taken into custody. If the seventy-two hour period expires on a Saturday, Sunday or other legal holiday, the seventy-two hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

B. *The appearance of the child 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 electronically transmitted facsimile process. The 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 § 19.2-3.1 B.*

~~B.~~ C. Notice of the detention hearing, either oral or written, stating the time, place and purpose of the hearing shall be given to the parent, guardian, legal custodian or other person standing in loco parentis if he can be found, to the child if twelve years of age or over and to the attorney for the Commonwealth.

~~C.~~ D. During the detention hearing, the judge shall advise the parties of the right to counsel pursuant to § 16.1-266. The parties shall be informed of the child's right to remain silent with respect to any allegation of delinquency and of the contents of the petition. The attorney for the Commonwealth shall be given the opportunity to be heard.

~~D.~~ E. If the judge finds that there is not probable cause to believe that the child committed the delinquent act alleged, the court shall order his release. If the judge finds that there is probable cause to believe that the child committed the delinquent act alleged but that the full-time detention of a child who is alleged to be delinquent is not required, the court shall order his release, and in so doing, the court may impose one or more of the following conditions singly or in combination:

1. Place the child in the custody of a parent, guardian, legal custodian or other person standing in loco parentis under their supervision, or under the supervision of an organization or individual agreeing to supervise him;

2. Place restrictions on the child's travel, association or place of abode during the period of his release;

3. Impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children specified in § 16.1-248.1; or

4. Release the child on bail or recognizance in accordance with the provisions of Chapter 9 (§ 19.2-119 et seq.) of Title 19.2.

E. F. An order releasing a child on any of the conditions specified in this section may, at any time, be amended to impose additional or different conditions of release or to return the child who is alleged to be delinquent to custody for failure to conform to the conditions previously imposed.

~~F.~~ G. All relevant and material evidence helpful in determining probable cause under this section or the need for detention may be admitted by the court even though not competent in a hearing on the petition.

~~G.~~ H. If the child is not released and a parent, guardian, legal custodian or other person standing in loco parentis is not notified and does not appear or does not waive appearance at the hearing, upon the request of such person, the court shall rehear the matter on the next day on which the court sits within the county or city wherein the charge against the child is pending. If the court does not sit within the county or city on the following day, such hearing shall be held before a judge within a reasonable time, not to exceed seventy-two hours, after the request.

~~H.~~ *I.* In considering probable cause under this section, if the court deems it necessary to summon witnesses to assist in such determination then the hearing may be continued and the child remain in detention, but in no event longer than three consecutive days, exclusive of Saturdays, Sundays, and legal holidays.