

LD8296164

HOUSE BILL NO. 1132

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, and §§ 19.2-311, 53.1-63 and 53.1-67 of the Code of Virginia relating to transfer of juvenile cases for trial as an adult; commitment to the Department of Corrections.

Patrons—Copeland, Abbitt, Harris, McDonnell, Mims and Moore

Referred to 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, and §§ 19.2-311, 53.1-63 and 53.1-67 of the Code of Virginia are 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 involving the use or display of a firearm or other deadly weapon 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 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,

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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 juvenile court, within ten days after the juvenile 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 juvenile 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 juvenile 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 juvenile court's opinion. The circuit court shall, within a reasonable period of time after receipt of the case from the juvenile 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 juvenile court had sufficient evidence to find probable cause, and enter an order either remanding the case to the juvenile 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 juvenile court as to such case shall terminate. The judge of the circuit court who reviewed the case after receipt from the juvenile 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 juvenile 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 juvenile court of his intention to seek a removal of the case to the circuit court, the juvenile 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 grand jury returns a true bill upon such indictment the jurisdiction of the juvenile court as to such case shall terminate.

§ 16.1-269. (Delayed effective date - See notes) 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 involving the use or display of a firearm or other deadly weapon 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 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 his intention to seek a

183 removal of the case to the circuit court, the family court shall set bail for the child in accordance with
184 Chapter 9 (§ 19.2-119 et seq.) of Title 19.2. After the case has been transferred or removed and the
185 grand jury returns a true bill upon such indictment the jurisdiction of the family court as to such case
186 shall terminate.

187 § 19.2-311. Indeterminate commitment to Department of Corrections in certain cases; duration and
188 character of commitment; concurrence by Department.

189 A. The judge, after a finding of guilt, when fixing punishment in those cases specifically enumerated
190 in subsection B of this section, may, in his discretion, in lieu of imposing any other penalty provided by
191 law and, with consent of the person convicted, commit such person for a period of four years, which
192 commitment shall be indeterminate in character. Subject to the provisions of subsection C hereof, such
193 persons shall be committed to the Department of Corrections for initial confinement for a period not to
194 exceed three years. Such confinement shall be followed by at least one year of supervisory parole,
195 conditioned on good behavior, but such parole period shall not, in any case, continue beyond the
196 four-year period. The sentence of indeterminate commitment and eligibility for continuous evaluation
197 and parole under § 19.2-313 shall remain in effect but eligibility for use of programs and facilities
198 specified in § 53.1-64 shall lapse if such person (i) voluntarily withdraws from the youthful offender
199 program, (ii) exhibits intractable behavior as defined in § 53.1-66, or (iii) is convicted of a second
200 criminal offense which is a felony. A sentence imposed for any second criminal offense shall run
201 consecutively with the indeterminate sentence.

202 B. The provisions of subsection A of this section shall be applicable to first convictions in which the
203 person convicted:

204 1. Committed the offense of which convicted after becoming eighteen but before becoming
205 twenty-one years of age; ~~or was a juvenile certified for trial as an adult under the provisions of~~
206 ~~§ 16.1-269 or § 16.1-272;~~

207 2. Was convicted of an offense which is either (i) a felony not punishable as a Class 1 felony, or (ii)
208 a misdemeanor involving injury to a person or damage to or destruction of property; and

209 3. Is considered by the judge to be capable of returning to society as a productive citizen following a
210 reasonable amount of rehabilitation.

211 C. Subsequent to a finding of guilt and prior to fixing punishment, the Department of Corrections
212 and the Parole Board shall, concurrently with the evaluation required by § 19.2-316, review all aspects
213 of the case to determine whether (i) such indeterminate sentence of commitment is in the best interest of
214 the Commonwealth and of the person convicted and (ii) facilities are available for the confinement of
215 such person. After the review such person shall be again brought before the court, which shall review
216 the findings of the Department and the Parole Board. The court may impose a sentence as authorized in
217 subsection A, or any other penalty provided by law.

218 § 53.1-63. Department to establish facilities for juveniles sentenced as adults and persons committed
219 under § 19.2-311 et seq. or

220 The Department shall establish, staff and maintain, at any state correctional facility designated by the
221 Board, programs and housing for the rehabilitation, training and confinement of persons committed to
222 the Department under the provisions of § 19.2-311 et seq. *or committed to the Department under the*
223 *provisions of § 16.1-272.* Persons admitted to these facilities *pursuant to § 19.2-311* shall be determined
224 by the Department to have the potential for rehabilitation through confinement and treatment therein.

225 § 53.1-67. Admission to facility; good conduct allowance restricted.

226 In no case shall a person *fifteen years of age or older who was* previously confined in a youthful
227 offender facility, whether for a different or the same offense, be confined again in such a facility, except
228 for the purposes of study, testing and diagnosis.

229 The provisions of §§ 53.1-191, 53.1-196, and 53.1-198 through 53.1-201 relating to good conduct
230 credits and allowances and extraordinary service and the provisions of § 53.1-187 relating to credit for
231 time served in a correctional facility or juvenile detention facility shall not apply to persons sentenced to
232 an indeterminate sentence under § 19.2-311 for a crime committed on or after July 1, 1983. Acts
233 performed by such persons which would earn credit for them under § 53.1-191, if it were applicable,
234 shall be noted on their record by the authorities of the facility.

235 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
236 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
237 **is \$1,650,700 in FY 2004.**