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HOUSE BILL NO. 1783

Offered January 19, 1995

A BILL to amend and reenact § 16.1-269.1 of the Code of Virginia as it is currently effective and as it may become effective, relating to conditions for transfer of juveniles to circuit court.

Patrons—Katzen, Cox, Dudley, Griffith, Kilgore, Marshall, Purkey, Ruff and Wilkins; Senator: Miller, K.G.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-269.1 of the Code of Virginia as it is currently effective and as it may become effective is amended and reenacted as follows:

§ 16.1-269.1. (For effective date - See note) Conditions for transfer to circuit court.

A. If a juvenile fourteen years of age or older 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. Except as provided in subsection B, 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 twenty 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 learning 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 mental retardation 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 A 4 of § 16.1-269.1.

B. The court may hold a transfer hearing and certify the juvenile for transfer to the appropriate

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60 circuit court without making the finding required by subdivision A 4 if a juvenile fourteen years of age
61 or older is charged with:

62 1. A Class 1 or 2 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 or, if the juvenile is
63 sixteen years of age or older, a Class 3 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2
64 for: (i) murder under Article 1; (ii) mob-related felony under Article 2; (iii) kidnapping or abduction
65 under Article 3; or (iv) assault or bodily wounding under Article 4; ~~or~~

66 2. Any unclassified felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 which carries a
67 maximum penalty of imprisonment for life or a term of imprisonment of forty years if committed by an
68 adult; *or*

69 3. *Any felony violation of subsection C or H of § 18.2-248.*

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

73 § 16.1-269.1. (Delayed effective date - See notes) Conditions for transfer to circuit court.

74 A. If a juvenile fourteen years of age or older is charged with an offense which would be a felony if
75 committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a
76 hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for
77 proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses
78 if committed by an adult. Any transfer to the appropriate circuit court shall be subject to the following
79 conditions:

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

82 2. The family court finds that probable cause exists to believe that the juvenile committed the
83 delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by
84 an adult;

85 3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden
86 is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the
87 evidence; and

88 4. Except as provided in subsection B, the court finds by a preponderance of the evidence that the
89 juvenile is not a proper person to remain within the jurisdiction of the family court. In determining
90 whether a juvenile is a proper person to remain within the jurisdiction of the family court, the court
91 shall consider, but not be limited to, the following factors:

92 a. The juvenile's age;

93 b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was
94 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense
95 was against persons or property, with greater weight being given to offenses against persons, especially
96 if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater
97 than twenty years confinement if committed by an adult; (iv) whether the alleged offense involved the
98 use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise
99 employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

100 c. Whether the juvenile can be retained in the juvenile justice system long enough for effective
101 treatment and rehabilitation;

102 d. The appropriateness and availability of the services and dispositional alternatives in both the
103 criminal justice and juvenile justice systems for dealing with the juvenile's problems;

104 e. The record and previous history of the juvenile in this or other jurisdiction, including (i) the
105 number and nature of previous contacts with family or circuit courts, (ii) the number and nature of prior
106 periods of probation, (iii) the number and nature of prior commitments to learning centers, (iv) the
107 number and nature of previous residential and community-based treatments, (v) whether previous
108 adjudications and commitments were for delinquent acts that involved the infliction of serious bodily
109 injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

110 f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional
111 entity in this or any other jurisdiction;

112 g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;

113 h. The juvenile's school record and education;

114 i. The juvenile's mental and emotional physical maturity; and

115 j. The juvenile's physical condition and physical maturity.

116 No transfer decision shall be precluded or reversed on the grounds that the court failed to consider
117 any of the factors specified in subdivision A 4 of § 16.1-269.1.

118 B. The court may hold a transfer hearing and certify the juvenile for transfer to the appropriate
119 circuit court without making the finding required by subdivision A 4 if a juvenile fourteen years of age
120 or older is charged with:

121 1. A Class 1 or 2 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 or, if the juvenile is

122 sixteen years of age or older, a Class 3 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2
 123 for: (i) murder under Article 1; (ii) mob-related felony under Article 2; (iii) kidnapping or abduction
 124 under Article 3; or (iv) assault or bodily wounding under Article 4; ~~or~~
 125 2. Any unclassified felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 which carries a
 126 maximum penalty of imprisonment for life or a term of imprisonment of forty years if committed by an
 127 adult; *or*
 128 3. *Any felony violation of subsection C or H of § 18.2-248.*
 129 If the court finds that the juvenile was not fourteen years of age or older at the time of the alleged
 130 commission of the offense or that the conditions specified in subdivision 1, 2, or 3 of subsection A have
 131 not been met, the case shall proceed as otherwise provided for by law.