

LD1801724

SENATE BILL NO. 330

Offered January 25, 1994

A BILL to amend and reenact § 16.1-269, as it is currently effective and as it may become effective, and § 16.1-309.1 of the Code of Virginia, relating to transfer of juvenile cases for trial as an adult.

Patrons—Potts, Barry, Benedetti, Calhoun, Chichester, Earley, Hawkins, Miller, K.G., Norment, Quayle, Robb, Stosch and Wampler; Delegate: Purkey

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-269, as it is currently effective and as it may become effective, and § 16.1-309.1 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 A1*, 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

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

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

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

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

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

102 A. If a child fifteen years of age or older is charged with an offense which, if committed by an
103 adult, could be punishable by confinement in a state correctional facility, the court shall on motion of
104 the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and,
105 *except as provided in subsection A1*, may retain jurisdiction or transfer such child for proper criminal
106 proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by
107 an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

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

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

111 3. The court finds:

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

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

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 § 16.1-309.1. Exception as to confidentiality.

188 ~~Notwithstanding any other provision of this article,~~ *Notwithstanding any other provision of this*
189 *article, whenever a child thirteen or older is adjudicated delinquent on the basis of an act which would*
190 *be a felony if committed by an adult, the court shall make public the name and address of the child and*
191 *the nature of the offense for which he has been adjudicated delinquent.*

192 *In any other case,* where consideration of public interest requires, the judge may make public the
193 name and address of a child and the nature of the offense for which a child has been adjudicated
194 delinquent (i) for an act which would be a Class 1, 2 or 3 felony, forcible rape or robbery if committed
195 by an adult, and (ii) in any case where a child is sentenced as an adult in accordance with § 16.1-284.

196 ~~Whenever~~ *Additionally, whenever* a child, charged with a delinquent act which would be forcible rape,
197 robbery or a Class 1, 2, or 3 felony if committed by an adult, becomes a fugitive from justice any time
198 prior to final disposition of the charge, the attorney for the Commonwealth may petition the court
199 having jurisdiction of the offense to authorize public release of the child's name, age, physical
200 description and photograph, the charge for which he is sought and any other information which may
201 expedite his apprehension. Upon a showing that the child is a fugitive and for good cause, the court
202 shall order release of this information to the public.

203 Upon the request of a victim of a delinquent act which would be a felony if committed by an adult,
204 the court may order that such victim be informed of the charge or charges brought, the findings of the
205 court, and the disposition of the case. For purposes of this section, "victim" shall be defined as in
206 § 19.2-299.1.

207 Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant to
208 § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been
209 terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

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