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## HOUSE BILL NO. 1288

Offered January 22, 1996

A BILL to amend and reenact § 16.1-269.6 of the Code of Virginia, as it is currently effective and as it may become effective, relating to future proceedings following a nolle prosequi of a juvenile.

Patrons—McDonnell, Cantor, Kilgore, McClure, Mims, Tata and Wagner

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 16.1-269.6 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:**

§ 16.1-269.6. Circuit court hearing; jury; nolle prosequi; termination of juvenile court jurisdiction; objections and appeals.

A. Within seven days after receipt of notice of an appeal from the transfer decision by either the attorney for the Commonwealth or the juvenile, or if an appeal to a decision to transfer is not noted, upon expiration of the time in which to note such an appeal, the clerk of the court shall forward to the circuit court all papers connected with the case, including any report required by subsection B of § 16.1-269.2, as well as a written court order setting forth the reasons for the juvenile court's decision. The clerk shall forward copies of the order to the attorney for the Commonwealth and other counsel of record.

B. The circuit court shall, within a reasonable time after receipt of the case from the juvenile court, (i) examine all such papers, reports and orders; (ii) if either the juvenile or the attorney for the Commonwealth has appealed the transfer decision, conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with § 16.1-269.1, but without redetermining whether the juvenile court had sufficient evidence to find probable cause; and (iii) enter an order either remanding the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an indictment. Upon advising the attorney for the Commonwealth that he may seek an indictment, the circuit court shall issue an order transferring the juvenile from the juvenile detention facility to an appropriate local correctional facility where the juvenile need no longer be entirely separate and removed from adults, unless, upon motion of counsel, good cause is shown for placement of the juvenile pursuant to the limitations of subdivision E (i), (ii), and (iii) of § 16.1-249.

C. The circuit court order advising the attorney for the Commonwealth that he may seek an indictment shall divest the juvenile court of its jurisdiction over the case as well as the juvenile court's jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme giving rise to the charge for which the juvenile has been transferred. *If, after indictment of the juvenile by the grand jury, the Commonwealth seeks a nolle prosequi of a charge then pending and the circuit court grants such request, then further action by the Commonwealth with regard to the case shall commence anew in the district court with jurisdiction over juvenile and domestic relations matters to include proceedings pursuant to Article 7 (§ 16.1-269.1 et seq.) of Chapter 11 of Title 16.1.* In addition, upon conviction of the juvenile following transfer and trial as an adult, the circuit court shall issue an order terminating the juvenile court's jurisdiction over that juvenile with respect to any future criminal acts alleged to have been committed by such juvenile and with respect to any pending allegations of delinquency which have not been disposed of by the juvenile court at the time of the criminal conviction. Upon receipt of the order terminating the juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending petitions of delinquency for proceedings in the appropriate general district court.

D. The judge of the circuit court who reviewed the case after receipt from the juvenile court shall not, over the objection of any interested party, preside over the trial of such charge or charges.

E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not made before arraignment.

F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included as applying to the provisions of § 19.2-243.

§ 16.1-269.6. (Delayed effective date) Circuit court hearing; nolle prosequi; termination of family court jurisdiction; objections and appeals.

A. Within seven days after receipt of notice of an appeal from the transfer decision by either the attorney for the Commonwealth or the juvenile, or if an appeal to a decision to transfer is not noted, upon expiration of the time in which to note appeal, the clerk of the family court shall forward to the

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60 circuit court all papers connected with the case, including any report required by subsection B of  
61 § 16.1-269.2 as well as a written court order setting forth the reasons for the family court's decision. The  
62 clerk shall forward copies of the order to the attorney for the Commonwealth and other counsel of  
63 record.

64 B. The circuit court shall, within a reasonable time after receipt of the case from the family court, (i)  
65 examine all such papers, reports and orders; (ii) if either the juvenile or the attorney for the  
66 Commonwealth has appealed the transfer decision, conduct a hearing to take further evidence on the  
67 issue of transfer, to determine if there has been substantial compliance with § 16.1-269.1, but without  
68 redetermining whether the family court had sufficient evidence to find probable cause; and (iii) enter an  
69 order either remanding the case to the family court or advising the attorney for the Commonwealth that  
70 he may seek an indictment. Upon advising the attorney for the Commonwealth that he may seek an  
71 indictment, the circuit court shall issue an order transferring the juvenile from the juvenile detention  
72 facility to an appropriate local correctional facility where the juvenile need no longer be entirely separate  
73 and removed from adults, unless, upon motion of counsel, good cause is shown for placement of the  
74 juvenile pursuant to the limitations of subdivision E (i), (ii), and (iii) of § 16.1-249.

75 C. The circuit court order advising the attorney for the Commonwealth that he may seek an  
76 indictment shall divest the family court of its jurisdiction over the case as well as the family court's  
77 jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme  
78 giving rise to the charge for which the juvenile has been transferred. *If, after indictment of the juvenile*  
79 *by the grand jury, the Commonwealth seeks a nolle prosequi of the charge then pending and the circuit*  
80 *court grants such request, then further action by the Commonwealth with regard to the case shall*  
81 *commence anew in the district court with jurisdiction over juvenile and domestic relations matters to*  
82 *include proceedings pursuant to Article 7 (§ 16.1-269.1 et seq.) of Chapter 11 of Title 16.1.* In addition,  
83 upon conviction of the juvenile following transfer and trial as an adult, the circuit court shall issue an  
84 order terminating the family court's jurisdiction over that juvenile with respect to any future criminal  
85 acts alleged to have been committed by such juvenile and with respect to any pending allegations of  
86 delinquency which have not been disposed of by the family court at the time of the criminal conviction.  
87 Upon receipt of the order terminating the family court's jurisdiction over the juvenile, the clerk of the  
88 family court shall forward any pending petitions of delinquency for proceedings in the appropriate  
89 general district court.

90 D. The judge of the circuit court who reviewed the case after receipt from the family court shall not,  
91 over the objection of any interested party, preside over the trial of such charge or charges.

92 E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not  
93 made before arraignment.

94 F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or  
95 § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included  
96 as applying to the provisions of § 19.2-243.