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**HOUSE BILL NO. 420**

Offered January 15, 1998

*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 juvenile offenders; transfer to circuit court.*

Patrons—Clement; Senators: Hawkins and Reynolds

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. Trial in circuit court; preliminary hearing; direct indictment; remand.

A. Except as provided in subsections B and C, if a juvenile fourteen years of age or older at the time of an alleged offense 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. 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 juvenile correctional 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 juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age

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60 or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40, or aggravated  
61 malicious wounding in violation of § 18.2-51.2.

62 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age  
63 or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of  
64 § 18.2-41, abduction in violation of § 18.2-48, *abduction by a prisoner in violation of § 18.2-48.1*,  
65 malicious wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in  
66 violation of § 18.2-51.1, felonious poisoning in violation of § 18.2-54.1, adulteration of products in  
67 violation of § 18.2-54.1, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape  
68 in violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 or object sexual penetration in  
69 violation of § 18.2-67.2, provided the attorney for the Commonwealth gives written notice of his intent  
70 to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered  
71 to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a  
72 parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days  
73 prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or  
74 if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed  
75 as provided in subsection A.

76 D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the  
77 juvenile court shall certify the charge, and all ancillary charges, to the grand jury. Such certification  
78 shall divest the juvenile court of jurisdiction as to the charge and any ancillary charges. Nothing in this  
79 subsection shall divest the juvenile court of jurisdiction over any matters unrelated to such charge and  
80 ancillary charges which may otherwise be properly within the jurisdiction of the juvenile court.

81 If the court does not find probable cause to believe that the juvenile has committed the violent  
82 juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by  
83 dismissal in the juvenile court, the attorney for the Commonwealth may seek a direct indictment in the  
84 circuit court. If the petition or warrant is terminated by nolle prosequi in the juvenile court, the attorney  
85 for the Commonwealth may seek an indictment only after a preliminary hearing in juvenile court.

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

89 E. An indictment in the circuit court cures any error or defect in any proceeding held in the juvenile  
90 court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the  
91 Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

92 § 16.1-269.1. (Delayed effective date) Trial in circuit court; preliminary hearing, direct indictment;  
93 remand.

94 A. Except as provided in subsections B and C, if a juvenile fourteen years of age or older at the time  
95 of an alleged offense is charged with an offense which would be a felony if committed by an adult, the  
96 court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold  
97 a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to  
98 the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any  
99 transfer to the appropriate circuit court shall be subject to the following conditions:

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

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

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

108 4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to  
109 remain within the jurisdiction of the family court. In determining whether a juvenile is a proper person  
110 to remain within the jurisdiction of the family court, the court shall consider, but not be limited to, the  
111 following factors:

112 a. The juvenile's age;

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

120 c. Whether the juvenile can be retained in the juvenile justice system long enough for effective  
121 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 family or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to juvenile correctional 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 family court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of §§ 18.2-31, 18.2-32 or § 18.2-40 or aggravated malicious wounding in violation of § 18.2-51.2.

C. The family court shall conduct a preliminary hearing whenever a juvenile fourteen years of age or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of § 18.2-41, abduction in violation of § 18.2-48, *abduction by a prisoner in violation of § 18.2-48.1*, malicious wounding in violation of § 18.2-51, malicious wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of § 18.2-54.1, adulteration of products in violation of § 18.2-54.1, robbery in violation of § 18.2-58 or carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2 provided the attorney for the Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification of the charge to the grand jury, he may proceed as provided in subsection A.

D. Upon a finding of probable cause pursuant to a preliminary hearing under subsection B or C, the family court shall certify the charge, and all ancillary charges, to the grand jury. Such certification shall divest the family court of jurisdiction as to the charge and any ancillary charges. Nothing in this subsection shall divest the family court of jurisdiction over any matters unrelated to such charge and ancillary charges which may otherwise be properly within the jurisdiction of the family court.

If the court does not find probable cause to believe that the juvenile has committed the violent juvenile felony as charged in the petition or warrant or if the petition or warrant is terminated by dismissal in the family court, the attorney for the Commonwealth may seek a direct indictment in the circuit court. If the petition or warrant is terminated by nolle prosequi in the family court, the attorney for the Commonwealth may seek an indictment only after a preliminary hearing in family court.

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

E. An indictment in the circuit court cures any error or defect in any proceeding held in the family court except with respect to the juvenile's age. If an indictment is terminated by nolle prosequi, the Commonwealth may reinstate the proceeding by seeking a subsequent indictment.

**2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0.**