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HOUSE BILL NO. 569

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact § 16.1-269.1 of the Code of Virginia, relating to juvenile transfer hearings for acts of terrorism and possession of certain weapons.

Patron—Iaquinto

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 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 this section.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age

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HB569

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

61 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile fourteen years of age
62 or older is charged with murder in violation of § 18.2-33, felonious injury by mob in violation of
63 § 18.2-41, *committing, conspiring, or aiding and abetting an act of terrorism in violation of § 18.2-46.5,*
64 *or possession, manufacture, distribution of a weapon of terrorism or hoax device in violation of*
65 *§ 18.2-46.6,* abduction in violation of § 18.2-48, malicious wounding in violation of § 18.2-51, malicious
66 wounding of a law-enforcement officer in violation of § 18.2-51.1, felonious poisoning in violation of
67 § 18.2-54.1, adulteration of products in violation of § 18.2-54.2, robbery in violation of § 18.2-58 or
68 carjacking in violation of § 18.2-58.1, rape in violation of § 18.2-61, forcible sodomy in violation of
69 § 18.2-67.1 or object sexual penetration in violation of § 18.2-67.2, provided the attorney for the
70 Commonwealth gives written notice of his intent to proceed pursuant to this subsection. The notice shall
71 be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then
72 represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis
73 with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the
74 Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification
75 of the charge to the grand jury, he may proceed 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 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
93 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
94 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
95 **781 of the Acts of Assembly of 2009 requires the Virginia Criminal Sentencing Commission to**
96 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
97 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
98 **Department of Juvenile Justice.**