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## SENATE BILL NO. 205

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact § 16.1-269.6 of the Code of Virginia, relating to juvenile's right to appeal transfer to circuit court.*

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Patron—Edwards

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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 is amended and reenacted as follows:**

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

A. Within seven days after receipt of notice of an appeal from the transfer decision pursuant to subsection A of § 16.1-269.1 or the certification or indictment of an offense listed in subsection C of § 16.1-269.1 and any ancillary offenses pursuant to subsection D of § 16.1-269.1, by either the attorney for the Commonwealth or the juvenile, or if an appeal to such 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. Within seven days after receipt of notice of an appeal, the clerk shall forward copies of the order to the attorney for the Commonwealth and other counsel of record.

B. The circuit court, when practicable, shall, within 45 days after receipt of the case from the juvenile court pursuant to subsection A of § 16.1-269.1, (i) if either the juvenile or the attorney for the Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and conduct a hearing to take further evidence on the issue of transfer, to determine if there has been substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the juvenile court had sufficient evidence to find probable cause; and (ii) enter an order either remanding the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an indictment. A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings. Upon advising the attorney for the Commonwealth that he may seek an indictment, the circuit court may 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. However, in cases where a charge has been certified by the juvenile court to the grand jury pursuant to subsection B or C of § 16.1-269.1, the attorney for the Commonwealth may seek an indictment upon such charge and any ancillary charge without obtaining an order of the circuit court advising him that he may do so. *Cases where the attorney for the Commonwealth sought an indictment upon a charge and any ancillary charge without obtaining an order of the circuit court advising him that he may do so that was certified by the juvenile court to the grand jury of an offense listed in subsection C of § 16.1-269.1 and any ancillary offenses pursuant to subsection D of § 16.1-269.1 shall be subject to review pursuant to subsection B1.*

*B1. Within 45 days after receipt of the case from the juvenile court of an offense listed in subsection C of § 16.1-269.1 and any ancillary offenses pursuant to subsection D of § 16.1-269.1, if either the juvenile or the attorney for the Commonwealth has appealed the juvenile court's certification or the direct indictment by the attorney for the Commonwealth in circuit court of the charge and all ancillary offenses, the circuit court shall conduct a hearing to take further evidence to determine if by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the circuit court and remand the case back to the juvenile court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the circuit court, the court shall consider, but not be limited to, the factors in clauses a through j of subdivision A 4 of § 16.1-269.1, including whether remanding jurisdiction would not depreciate the seriousness of the offense.*

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

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SB205

59 giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the  
60 juvenile following transfer or certification and trial as an adult, the circuit court shall issue an order  
61 terminating the juvenile court's jurisdiction over that juvenile with respect to any future criminal acts  
62 alleged to have been committed by such juvenile and with respect to any pending allegations of  
63 delinquency which have not been disposed of by the juvenile court at the time of the criminal  
64 conviction. However, such an order terminating the juvenile court's jurisdiction shall not apply to any  
65 allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and  
66 domestic relations district court if the defendant were an adult. Upon receipt of the order terminating the  
67 juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending  
68 petitions of delinquency for proceedings in the appropriate general district court.

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

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

73 F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or  
74 §-16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included  
75 as applying to the provisions of § 19.2-243.