



## Fiscal Impact Statement for Proposed Legislation

### *Virginia Criminal Sentencing Commission*

#### House Bill No. 1980

(Patron – Greason)

LD #: 11100856

Date: 12/9/2010

Topic: Transfer of juveniles to circuit court

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$50,000 \*
- **Local Adult Correctional Facilities:**  
Cannot be determined
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
Cannot be determined
- **Juvenile Detention Facilities:**  
Cannot be determined

\* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

#### Summary of Proposed Legislation:

The proposal amends two sections of the *Code of Virginia* relating to the transfer of juveniles to circuit court for trial as adults. Specifically, the proposal modifies §§ 16.1-228 and 16.1-269.1 to expand the definition of a “violent juvenile felony” to include attempts and conspiracies to commit any of the offenses that currently fall under that definition. Subsections B and C of § 16.1-269.1 outline procedures for the transfer of juveniles charged with violent juvenile felonies to circuit court. Currently, the juvenile court is required (per § 16.1-269.1(B)) to hold a preliminary hearing in every case in which a juvenile 14 years of age or older is charged with murder (under §§ 18.2-31, 18.2-32 or 18.2-40) or aggravated malicious wounding (§ 18.2-51.2) and, upon finding probable cause, must certify the charge (and all ancillary charges) to the grand jury, thus divesting the juvenile court of jurisdiction. In addition, under § 16.1-269.1(C), the juvenile court must hold a preliminary hearing when a juvenile is charged with certain other violent offenses (such as felony murder, malicious wounding, robbery, and rape) if the Commonwealth’s attorney gives notice that he or she intends to pursue transfer; upon finding probable cause in such cases, the court must certify the charge and all ancillary charges to the grand jury.<sup>1</sup>

Under the proposal, if the juvenile court judge finds probable cause for an attempt or conspiracy to commit any of the offenses currently listed under § 16.1-269.1(B) or (C), the charges (and all ancillary charges) must be transferred to circuit court in the same manner as completed acts. For instance, if a juvenile is charged with an attempt or conspiracy to commit an offense currently listed under subsection B (capital, first or second degree murder or aggravated malicious wounding), and the court finds probable cause, the charge (and all ancillary charges) would be certified to circuit court. In addition, the Commonwealth’s attorney would be able to seek a direct indictment in circuit court if the

<sup>1</sup> If the juvenile court judge does not find probable cause or dismisses the violent juvenile felony charge, the Commonwealth’s attorney may seek a direct indictment in circuit court.

juvenile court does not find probable cause or dismisses the attempt or conspiracy charge. Currently, following a motion from the prosecutor, juveniles charged with attempts or conspiracies to commit offenses listed under § 16.1-269.1 (B) or (C) can be transferred to circuit court under § 16.1-269.1(A) at the discretion of the juvenile court judge, unless they are considered ancillary to charges that already meet the requirements under subsection B or C.

Several additional restrictions exist for juveniles who are convicted of a violent juvenile felony. For instance, these offenders cannot participate in certain programs, such as some community-based substance abuse programs (per §16.1-278.8), and judges cannot sentence juveniles whose prior or current offense is a violent juvenile felony to post-dispositional placement in a secure detention facility under § 16.1-284.1(A). In addition, intake officers can proceed informally on a complaint alleging a child is in need of services, in need of supervision, or delinquent only if the juvenile is not alleged to have committed a violent juvenile felony or has not previously been proceeded against informally or adjudicated delinquent for a felony offense (§ 16.1-260).

Circuit court judges have several sentencing options and obligations that are not available to juvenile and domestic relations court (JDR) judges. For instance, in cases where a defendant is convicted of a violent juvenile felony, § 16.1-272 requires that the circuit court sentence the defendant for the violent offense as well as all ancillary charges in the same manner as provided for adults; however, the court may suspend the adult sentence conditioned upon the successful completion of a juvenile sanction. In addition, several court decisions have clarified that, while they do not apply in juvenile court, mandatory minimum penalties apply to juveniles convicted in circuit court.<sup>2</sup> Moreover, per § 16.1-271, any juvenile who is tried and convicted in a circuit court as an adult must be treated as an adult in any criminal proceeding resulting from any subsequent criminal acts and in any pending allegations of delinquency that have not been disposed of by the juvenile court at the time of the circuit court conviction.

---

## **Analysis:**

In 2009, at the request of the Virginia State Crime Commission, the Sentencing Commission compiled data regarding juveniles<sup>3</sup> convicted in circuit court. This analysis was updated in 2010. According to these data, the number of cases in which a juvenile was convicted of a felony in circuit court fluctuated between 489 and 551 per year between fiscal year (FY) 2001 and FY2006. In FY2007 and FY2008, the number of juvenile sentencing events in circuit court rose to 665 and 684, respectively. However, since FY2008, the number of juvenile cases has declined to 451 in FY2010. While the FY2010 data are still preliminary, the numbers are not expected to increase substantially. It should be noted that these data include juveniles transferred from juvenile and domestic relations court to circuit court as well as juveniles who were automatically treated as adults in circuit court (pursuant to § 16.1-271) because they had previously been transferred and convicted as an adult; due to limitations of the data, these cases cannot be differentiated from one another.

Based upon available data, approximately 53% of juveniles convicted of a felony in circuit court between FY2001 and FY2010 were convicted of a completed offense listed under § 16.1-269.1(B) or (C).

---

<sup>2</sup> See *Green v. Commonwealth*, 28 Va. App. 567, 507 S.E.2d 627 (1998); *Bullock v. Commonwealth*, 48 Va. App. 359, 631 S.E.2d 334 (2006); *Brown, Dwayne v. Commonwealth*, 279 Va. 210, 688 S.E.2d 185 (2010).

<sup>3</sup> “Juveniles” refers to persons who were under the age of 18 at the time of at least one of the offenses.

Available data indicate that, among the juvenile convictions in circuit court that did not involve a completed offense listed in § 16.1-269.1(B) or (C), 7% involved a conviction for an attempt or conspiracy to commit an offense identified in subsection B or C. Because these cases involved attempts and conspiracies, cases transferred from juvenile court would most likely have been transferred under § 16.1-269.1(A). The number of additional juveniles that would be transferred to circuit court as a result of the proposal cannot be determined; however, it is likely that a large share of these juveniles would receive a state-responsible (prison) term if convicted in circuit court. Of the juveniles convicted in circuit court for an attempt or conspiracy to commit one of the offenses listed in § 16.1-269.1(B) or (C), more than half (57%) were given a state-responsible (prison) term, with a median sentence length of nearly four years. For the 7% who were sentenced to a local-responsible (jail) term, the median sentence length was six months. Another 18% were sentenced to adult probation without an active term of incarceration. Roughly 18% received a juvenile sanction, including commitment to the Department of Juvenile Justice (DJJ) or juvenile probation. The remaining three offenders received a blended sentence; juveniles who are given a blended sentence will serve up to age 21 at a DJJ facility and are then transferred to the Department of Corrections to serve the remainder of the term of incarceration; however, judges may review the juvenile's progress prior to transfer to the Department of Corrections and may reconsider the offender's sentence at that time.

According to the Department of Juvenile Justice, 11 juvenile intake cases in FY2010 included a conspired or attempted offense listed under § 16.1-269.1(B) that was not accompanied by a completed charge listed in subsection B. In FY2010, 111 intakes did not involve a completed offense under § 16.1-269.1(C) but involved a conspired or attempted offense under this subsection.

---

### **Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal would eliminate the discretion of juvenile court judges to retain jurisdiction over juveniles charged with an attempt or conspiracy to commit any of the offenses currently listed under § 16.1-269.1(B) or (C). Upon finding probable cause, the juvenile court judge would be required to transfer the case to circuit court. If the juvenile court judge does not find probable cause or dismisses the charges, the Commonwealth's attorney could seek a direct indictment for these offenses in circuit court. Thus, the number of juveniles transferred to circuit court may increase.

Circuit court judges can employ a number of sentencing options that are not available to juvenile court judges, including incarceration in adult prison and jail facilities. Moreover, mandatory minimum penalties apply to juveniles convicted in circuit court and, if a charge that is ancillary to the attempted or conspired violent felony carries a mandatory minimum, the circuit court judge must impose the mandatory time. Additionally, per § 16.1-271, juveniles who are convicted as adults in circuit court must be treated as adults for subsequent criminal acts and in any allegations of delinquency that are pending in juvenile court at the time of the circuit court conviction.

By increasing the number of individuals who are eligible to receive an adult prison sentence, the proposed legislation may increase the future state-responsible (prison) bed space needs of the Commonwealth. The number of additional juveniles who may be convicted in circuit court in the future, however, is unknown. Therefore, the impact cannot be determined.

**Local adult correctional facilities.** The proposal could also increase local-responsible (jail) bed space needs of the Commonwealth; however, the size of the impact cannot be determined.

**Adult community corrections programs.** The proposal may have an impact on adult community corrections programs. However, the magnitude of this impact cannot be determined.

**Virginia's sentencing guidelines.** The sentencing guidelines cover nearly all offenses listed under § 16.1-269.1(B) and (C) as well as attempts and conspiracies to commit these offenses. By statute, the guidelines apply in cases of juveniles tried and convicted in circuit court. No adjustment to the guidelines would be necessary under the proposal.

**Juvenile correctional centers.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on juvenile correctional center (JCC) bed space needs cannot be determined.

**Juvenile detention facilities.** According to the Department of Juvenile Justice (DJJ), the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

---

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 874 of the 2010 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.**

juvtransfer01\_0856