



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 718 (Patron – Kilgore, T.G.)

LD #: 12102422

Date: 1/11/2012

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 890 of the 2011 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 § 16.1-269.1, which outlines the criteria and procedures for transferring juveniles to circuit court for trial as adults.

The proposal expands the list of offenses in § 16.1-269.1(B) to include a second or subsequent charge for any act of violence defined in § 19.2-297.1 (murder, voluntary manslaughter, robbery, malicious wounding, abduction, crimes by mobs, felony sexual assault, and arson). For offenses listed in § 16.1-269.1(B), a preliminary hearing is automatic and, upon finding probable cause, the juvenile court must certify the charges to the grand jury (which divests the juvenile court of any jurisdiction in the case). Currently, a preliminary hearing is automatic in cases involving capital murder, first or second degree murder, or aggravated malicious wounding.

The proposal also expands the list of offenses in § 16.1-269.1(C) to include:

- Gang participation in violation of § 18.2-46.2;
- Felonious gang recruitment in violation of § 18.2-46.3;
- Second or subsequent violations of § 18.2-248 (selling, distributing, etc., a controlled substance);
- Second or subsequent violations of § 18.2-248.03 (selling, distributing, etc., methamphetamine);
- Felony violations of § 18.2-248.1 (selling, distributing, etc., marijuana) if the offender has a prior adjudication under the same statute; and
- Felony violations of § 18.2-248.5 (selling, distributing, etc., anabolic steroids) if the offender has a prior adjudication under the same statute.

For offenses listed in § 16.1-269.1(C), upon notice of the prosecutor's intent to pursue transfer, the juvenile court must conduct a preliminary hearing and, upon finding probable cause, must certify the

charges to the grand jury (thus divesting the juvenile court of any jurisdiction in the case).<sup>1</sup> Currently, following motion of the prosecutor, juveniles charged with felony gang offenses and felony drug crimes can be transferred to circuit court under § 16.1-269.1(A) at the discretion of the juvenile court judge.

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**Analysis:**

Court Service Units (CSUs), operated by the Virginia Department of Juvenile Justice (DJJ), serve as the point of entry into the juvenile justice system. An “intake” occurs when a juvenile is brought before a CSU intake officer for one or more alleged law violations. If the charges are not otherwise resolved, a petition can be filed against the juvenile and the case will proceed to court. Subject to the provisions of § 16.1-269.1, juveniles 14 years of age or older may be transferred to circuit for trial as adults. DJJ analyzed intake records for fiscal years 2007 through 2011 involving juveniles who were at least 14 years of age. Based on this analysis, DJJ reports the following information:

- An average of 251 juvenile intakes each year resulted in a petition for a second or subsequent act of violence defined in § 19.2-297.1<sup>2</sup>;
- An average of 167 juvenile intakes each year resulted in a petition for a gang offense defined in § 18.2-46.2 or for felony gang recruitment under § 18.2-46.3;
- An average of 40 juvenile intakes each year resulted in a petition for a second or subsequent drug offense specified in the proposal where the prior offense was a misdemeanor<sup>2</sup>; and
- An average of 43 juvenile intakes each year resulted in a petition for a second or subsequent drug offense specified in the proposal where the prior offense was a felony.<sup>2</sup>

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**Impact of Proposed Legislation:**

**State adult correctional facilities.** The proposal expands the juvenile transfer provisions in subsections (B) and (C) of § 16.1-269.1. Specifically, the proposal would eliminate the discretion of juvenile court judges to retain jurisdiction over juveniles charged with certain specified offenses. 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 carries a mandatory minimum term, 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.

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

<sup>2</sup> A juvenile was identified as having a previous adjudication for one of the specified offenses if he or she had a prior guilty adjudication, probation placement, post-detention placement, or commitment to DJJ for one of those crimes.

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

**Adult community corrections programs.** Because the proposal could result in circuit court convictions and subsequent supervision requirements for an additional number of juveniles, the proposal may increase the need for adult community corrections resources. Since the number of cases cannot be estimated, the potential impact on community corrections resources cannot be determined.

**Virginia’s sentencing guidelines.** The sentencing guidelines cover nearly all felony convictions in circuit court. 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 effect of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

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**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 890 of the 2011 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.**

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