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## SENATE BILL NO. 1659

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on January 28, 2019)

(Patron Prior to Substitute—Senator Marsden)

A *BILL to amend and reenact §§ 16.1-269.1, 16.1-269.2, and 16.1-277.1 of the Code of Virginia, relating to juveniles; trial as adult.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-269.1, 16.1-269.2, and 16.1-277.1 of the Code of Virginia are 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 14 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 20 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 intellectual disability 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 4.

B. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 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.

60 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 14 years of age or  
61 older is charged with murder in violation of § 18.2-33; felonious injury by mob in violation of  
62 § 18.2-41; abduction in violation of § 18.2-48; malicious wounding in violation of § 18.2-51; malicious  
63 wounding of a law-enforcement officer in violation of § 18.2-51.1; felonious poisoning in violation of  
64 § 18.2-54.1; adulteration of products in violation of § 18.2-54.2; robbery in violation of § 18.2-58 or  
65 carjacking in violation of § 18.2-58.1; rape in violation of § 18.2-61; forcible sodomy in violation of  
66 § 18.2-67.1; object sexual penetration in violation of § 18.2-67.2; manufacturing, selling, giving,  
67 distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or  
68 an imitation controlled substance in violation of § 18.2-248 if the juvenile has been previously  
69 adjudicated delinquent on two or more occasions of violating § 18.2-248 provided the adjudications  
70 occurred after the juvenile was at least 14 years of age; manufacturing, selling, giving, distributing, or  
71 possessing with intent to manufacture, sell, give, or distribute methamphetamine in violation of  
72 § 18.2-248.03 if the juvenile has been previously adjudicated delinquent on two or more occasions of  
73 violating § 18.2-248.03 provided the adjudications occurred after the juvenile was at least 14 years of  
74 age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to manufacture,  
75 sell, give, or distribute anabolic steroids in violation of § 18.2-248.5 if the juvenile has been previously  
76 adjudicated delinquent on two or more occasions of violating § 18.2-248.5 provided the adjudications  
77 occurred after the juvenile was at least 14 years of age, provided the attorney for the Commonwealth  
78 gives written notice of his intent to proceed pursuant to this subsection. *Prior to giving written notice of*  
79 *his intent to proceed pursuant to this subsection, the attorney for the Commonwealth may submit a*  
80 *written request to the director of the court services unit to complete a report as described in subdivision*  
81 *B of § 16.1-269.2. The report shall be filed with the court and mailed or delivered to (i) the attorney for*  
82 *the Commonwealth and (ii) counsel for the juvenile, or, if the juvenile is not represented by counsel, to*  
83 *the juvenile and a parent, guardian, or other person standing in loco parentis with respect to the*  
84 *juvenile, within 21 days of the date of the written request. After reviewing the report, if the attorney for*  
85 *the Commonwealth still intends to proceed pursuant to this subsection, he shall then provide the written*  
86 *notice of such intent, which shall include affirmation that he reviewed the report.* The notice shall be  
87 filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then  
88 represented by counsel, to the juvenile and a parent, guardian, or other person standing in loco parentis  
89 with respect to the juvenile, at least seven days prior to the preliminary hearing. If the attorney for the  
90 Commonwealth elects not to give such notice, or if he elects to withdraw the notice prior to certification  
91 of the charge to the grand jury, he may proceed as provided in subsection A.

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

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

102 If the court finds that the juvenile was not 14 years of age or older at the time of the alleged  
103 commission of the offense or that the conditions specified in subdivision A 1, 2, or 3 have not been  
104 met, the case shall proceed as otherwise provided for by law.

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

108 **§ 16.1-269.2. Admissibility of statement; investigation and report; bail.**

109 A. Statements made by the juvenile at the transfer hearing provided for under § 16.1-269.1 shall not  
110 be admissible against him over objection in any criminal proceedings following the transfer, except for  
111 purposes of impeachment.

112 B. Prior to a transfer hearing pursuant to subsection A of § 16.1-269.1, *or a preliminary hearing*  
113 *pursuant to subsection C of § 16.1-269.1*, a study and report to the court, in writing, relevant to the  
114 factors set out in subdivision A 4 of § 16.1-269.1, as well as an assessment of any affiliation with a  
115 criminal street gang as defined in § 18.2-46.1, shall be made by the probation services or other qualified  
116 agency designated by the court. Upon motion of the attorney for the Commonwealth for a transfer  
117 hearing pursuant to subsection A of § 16.1-269.1, the attorney for the Commonwealth shall provide  
118 notice to the designated probation services or other qualified agency of the need for a transfer report.  
119 Counsel for the juvenile and the attorney for the Commonwealth shall have full access to the study and  
120 report and any other report or data concerning the juvenile which are available to the court. The court  
121 shall not consider the report until a finding has been made concerning probable cause. If the court so

orders, the study and report may be expanded to include matters provided for in § 16.1-273, whereupon it may also serve as the report required by this subsection, but on the condition that it will not be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

C. After the completion of the hearing, whether or not the juvenile court decides to retain jurisdiction over the juvenile or transfer such juvenile for criminal proceedings in the circuit court, the juvenile court shall set bail for the juvenile in accordance with Chapter 9 (§ 19.2-119 et seq.) of Title 19.2, if bail has not already been set.

**§ 16.1-277.1. Time limitation.**

A. When a child is held continuously in secure detention, he shall be released from confinement if there is no adjudicatory or transfer hearing conducted by the court for the matters upon which he was detained within twenty-one days from the date he was first detained.

B. If a child is not held in secure detention or is released from same after having been confined, an adjudicatory or transfer hearing on the matters charged in the petition or petitions issued against him shall be conducted within 120 days from the date the petition or petitions are filed.

C. When a child is held in secure detention after the completion of his adjudicatory hearing or is detained when the juvenile court has retained jurisdiction as a result of a transfer hearing, he shall be released from such detention if the disposition hearing is not completed within thirty days from the date of the adjudicatory or transfer hearing.

D. The time limitations provided for in this section shall be tolled during any period in which (i) the whereabouts of the child are unknown, (ii) the child has escaped from custody, ~~or~~ (iii) the child has failed to appear pursuant to a court order, *or (iv) a report is being prepared pursuant to the written request by the attorney for the Commonwealth in accordance with subsection C of § 16.1-269.1.* The limitations also may be extended by the court for a reasonable period of time based upon good cause shown, provided that the basis for such extension is recorded in writing and filed among the papers of the proceedings. For the purposes of this section, good cause includes, but is not limited to, extension of limitations necessary to obtain the presence of a witness to testify regarding the results of scientific analyses or examinations *and good cause shown by the director of the court services unit completing a report pursuant to subsection C of § 16.1-269.1 that additional time is needed for the completion of the report.*