

23100455D

HOUSE BILL NO. 2121

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact § 16.1-269.1 of the Code of Virginia, relating to juvenile transfer hearing; factors to be considered.

Patron—Hudson

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 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; *and*

k. *The nature and extent of any prior trauma.*

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.

INTRODUCED

HB2121

59 B. The juvenile court shall conduct a preliminary hearing whenever a juvenile 16 years of age or
60 older is charged with murder in violation of § 18.2-31, 18.2-32 or 18.2-40, or aggravated malicious
61 wounding in violation of § 18.2-51.2. If the juvenile is 14 years of age or older, but less than 16 years
62 of age, then the court may proceed, on motion of the attorney for the Commonwealth, as provided in
63 subsection A.

64 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 16 years of age or
65 older is charged with murder in violation of § 18.2-33; felonious injury by mob in violation of
66 § 18.2-41; abduction in violation of § 18.2-48; malicious wounding in violation of § 18.2-51; malicious
67 wounding of a law-enforcement officer in violation of § 18.2-51.1; felonious poisoning in violation of
68 § 18.2-54.1; adulteration of products in violation of § 18.2-54.2; robbery in violation of subdivision B 1
69 or 2 of § 18.2-58 or carjacking in violation of § 18.2-58.1; rape in violation of § 18.2-61; forcible
70 sodomy in violation of § 18.2-67.1; object sexual penetration in violation of § 18.2-67.2; manufacturing,
71 selling, giving, distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled
72 substance or an imitation controlled substance in violation of § 18.2-248 if the juvenile has been
73 previously adjudicated delinquent on two or more occasions of violating § 18.2-248 provided the
74 adjudications occurred after the juvenile was at least 16 years of age; manufacturing, selling, giving,
75 distributing, or possessing with intent to manufacture, sell, give, or distribute methamphetamine in
76 violation of § 18.2-248.03 if the juvenile has been previously adjudicated delinquent on two or more
77 occasions of violating § 18.2-248.03 provided the adjudications occurred after the juvenile was at least
78 16 years of age; or felonious manufacturing, selling, giving, distributing, or possessing with intent to
79 manufacture, sell, give, or distribute anabolic steroids in violation of § 18.2-248.5 if the juvenile has
80 been previously adjudicated delinquent on two or more occasions of violating § 18.2-248.5 provided the
81 adjudications occurred after the juvenile was at least 16 years of age, provided the attorney for the
82 Commonwealth gives written notice of his intent to proceed pursuant to this subsection. Prior to giving
83 written notice of his intent to proceed pursuant to this subsection, the attorney for the Commonwealth
84 shall submit a written request to the director of the court services unit to complete a report as described
85 in subsection B of § 16.1-269.2 unless waived by the juvenile and his attorney or other legal
86 representative. The report shall be filed with the court and mailed or delivered to (i) the attorney for the
87 Commonwealth and (ii) counsel for the juvenile, or, if the juvenile is not represented by counsel, to the
88 juvenile and a parent, guardian, or other person standing in loco parentis with respect to the juvenile,
89 within 21 days of the date of the written request. After reviewing the report, if the attorney for the
90 Commonwealth still intends to proceed pursuant to this subsection, he shall then provide the written
91 notice of such intent, which shall include affirmation that he reviewed the report. The notice shall be
92 filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile is not then
93 represented by counsel, to the juvenile and a parent, guardian or other person standing in loco parentis
94 with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for the
95 Commonwealth elects not to give such notice, if he elects to withdraw the notice prior to certification of
96 the charge to the grand jury, or if the juvenile is 14 years of age or older, but less than 16 years of age,
97 he may proceed as provided in subsection A.

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

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

108 If the court finds that the juvenile was not (i) for the purposes of subsection A, 14 years of age or
109 older or (ii) for purposes of subsection B or C, 16 years of age or older, at the time of the alleged
110 commission of the offense or that the conditions specified in subdivision A 1, 2, or 3 have not been
111 met, the case shall proceed as otherwise provided for by law.

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