

LD0234204

HOUSE BILL NO. 2139

Offered January 23, 1995

A BILL to amend and reenact §§ 16.1-269.1, 16.1-269.3, 16.1-299, 16.1-306 as they are currently effective and as they may become effective, and §§ 16.1-270, 16.1-285.1 and 18.2-308.2 of the Code of Virginia, relating to serious juvenile offenders; treatment as adults.

Patrons—Diamonstein, Behm, Bennett, Brickley, Cooper, Councill, Cranwell, Croshaw, Davies, Grayson, Heilig, Hull, Johnson, Moore, Plum and Reynolds; Senators: Saslaw and Woods

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-269.1, 16.1-269.3, 16.1-299, 16.1-306 as they are currently effective and as they may become effective, and §§ 16.1-270, 16.1-285.1 and 18.2-308.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-269.1. (For effective date - See note) Conditions for transfer to circuit court.

A. If a juvenile fourteen years of age or older is charged with an offense which would be a felony if committed by an adult *or a juvenile of any age is charged with an offense which would be a Class 1, 2 or 3 felony or a felony for which the statutorily authorized minimum term of imprisonment is at least five years*, 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 *otherwise make the juvenile eligible for transfer pursuant to this section*;

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. Except as provided in subsection B, 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 twenty 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 learning 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 mental retardation or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional maturity; and

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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 A 4 of § 16.1-269.1.

B. The court may hold a transfer hearing and certify the juvenile for transfer to the appropriate circuit court without making the finding required by subdivision A 4 if a juvenile fourteen years of age or older is charged with:

1. A Class 1 or 2 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 or, if the juvenile is sixteen years of age or older, a Class 3 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 for: (i) murder under Article 1; (ii) mob-related felony under Article 2; (iii) kidnapping or abduction under Article 3; or (iv) assault or bodily wounding under Article 4; or

2. Any unclassified felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 which carries a maximum penalty of imprisonment for life or a term of imprisonment of forty years if committed by an adult.

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

§ 16.1-269.1. (Delayed effective date - See notes) Conditions for transfer to circuit court.

A. If a juvenile fourteen years of age or older is charged with an offense which would be a felony if committed by an adult *or a juvenile of any age is charged with an offense which would be a Class 1, 2 or 3 felony or a felony for which the statutorily authorized minimum term of imprisonment is at least five years*, 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 family 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 *otherwise make the juvenile eligible for transfer pursuant to this section*;

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. Except as provided in subsection B, the court finds by a preponderance of the evidence that the juvenile is not a proper person to remain within the jurisdiction of the family court. In determining whether a juvenile is a proper person to remain within the jurisdiction of the family 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 twenty 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 jurisdiction, including (i) the number and nature of previous contacts with family or circuit courts, (ii) the number and nature of prior periods of probation, (iii) the number and nature of prior commitments to learning 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 mental retardation or mental illness;

h. The juvenile's school record and education;

i. The juvenile's mental and emotional physical 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 A 4 of § 16.1-269.1.

B. The court may hold a transfer hearing and certify the juvenile for transfer to the appropriate circuit court without making the finding required by subdivision A 4 if a juvenile fourteen years of age or older is charged with:

1. A Class 1 or 2 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 or, if the juvenile is sixteen years of age or older, a Class 3 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 for: (i) murder under Article 1; (ii) mob-related felony under Article 2; (iii) kidnapping or abduction under Article 3; or (iv) assault or bodily wounding under Article 4; or

2. Any unclassified felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2 which carries a maximum penalty of imprisonment for life or a term of imprisonment of forty years if committed by an adult.

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

§ 16.1-269.3. (For effective date - See note) Retention by juvenile court; appeal by Commonwealth.

If the case is not transferred, the judge who conducted the hearing shall not, over the objection of any interested party, preside at the adjudicatory hearing on the petition, but rather it shall be presided over by another judge of that court. If the attorney for the Commonwealth deems it to be in the public interest, and the juvenile is ~~fourteen years of age or older~~ and is charged with an offense which, if committed by an adult, would be punishable by death or confinement in a state correctional facility for life or a maximum period of twenty years or more, he may, within ten days after the juvenile court's final decision to retain the case, file a notice of appeal of the decision to the appropriate circuit court. A copy of such notice shall be furnished at the same time to the counsel for the juvenile.

§ 16.1-269.3. (Delayed effective date - See notes) Retention by family court; appeal by Commonwealth.

If the case is not transferred, the judge who conducted the hearing shall not, over the objection of any interested party, preside at the adjudicatory hearing on the petition, but rather it shall be presided over by another judge of that court. If the attorney for the Commonwealth deems it to be in the public interest, and the juvenile is ~~fourteen years of age or older~~ and is charged with an offense which, if committed by an adult, would be punishable by death or confinement in a state correctional facility for life or a maximum period of twenty years or more, he may, within ten days after the family court's final decision to retain the case, file a notice of appeal of the decision to the appropriate circuit court. A copy of such notice shall be furnished at the same time to the counsel for the juvenile.

§ 16.1-270. (For effective date - See note) Waiver of jurisdiction of juvenile court in certain cases.

At any time prior to commencement of the adjudicatory hearing, a juvenile ~~fourteen years of age or older charged with an offense which if committed by an adult could be punishable by confinement in a state correctional facility~~ otherwise eligible for transfer pursuant to § 16.1-269.1, with the written consent of his counsel, may elect in writing to waive the jurisdiction of the juvenile court and have his case transferred to the appropriate circuit court, in which event his case shall thereafter be dealt with in the same manner as if he had been transferred pursuant to this article.

§ 16.1-270. (Delayed effective date - See notes) Waiver of jurisdiction of family court in certain cases.

At any time prior to commencement of the adjudicatory hearing, a juvenile ~~fourteen years of age or older charged with an offense which if committed by an adult could be punishable by confinement in a state correctional facility~~ otherwise eligible for transfer pursuant to § 16.1-269.1, with the written consent of his counsel, may elect in writing to waive the jurisdiction of the family court and have his case transferred to the appropriate circuit court, in which event his case shall thereafter be dealt with in the same manner as if he had been transferred pursuant to this article.

§ 16.1-285.1. Commitment of serious offenders.

A. In the case of a juvenile ~~fourteen years of age or older~~ who has been found guilty of an offense which would be a felony if committed by an adult, and either (i) the juvenile is on parole for an offense which would be a felony if committed by an adult, (ii) the juvenile was committed to the state for an offense which would be a felony if committed by an adult within the immediately preceding twelve months or (iii) the felony offense is punishable by a term of confinement of ~~greater than~~ twenty years or more if the felony was committed by an adult, and the court finds that commitment under this section is necessary to meet the rehabilitative needs of the juvenile and would serve the best interests of the community, then the court may order the juvenile committed to the Department of Youth and Family Services for placement in a learning center for the period of time prescribed pursuant to this section.

B. Prior to committing any juvenile pursuant to this section, the court shall consider:

1. The juvenile's age;

2. The seriousness and number of the present offenses, including (i) whether the offense was

183 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the offense was
184 against persons or property, with greater weight being given to offenses against persons, especially if
185 death or injury resulted; (iii) whether the offense involved the use of a firearm or other dangerous
186 weapon by brandishing, displaying, threatening with or otherwise employing such weapon; and (iv) the
187 nature of the juvenile's participation in the alleged offense;

188 3. The record and previous history of the juvenile in this or any other jurisdiction, including (i) the
189 number and nature of previous contacts with courts, (ii) the number and nature of prior periods of
190 probation, (iii) the number and nature of prior commitments to learning centers, (iv) the number and
191 nature of previous residential and community-based treatments, (v) whether previous adjudications and
192 commitments were for delinquent acts that involved the infliction of serious bodily injury, and (vi)
193 whether the offense is part of a repetitive pattern of similar adjudicated offenses; and

194 4. The Department's recommended length of stay based on treatment goals enumerated in the social
195 history report.

196 Such commitment order must be supported by a determination that the interests of the juvenile and
197 community require that the juvenile be placed under legal restraint or discipline and that the juvenile is
198 not a proper person to receive treatment or rehabilitation through other juvenile programs or facilities.

199 C. In ordering commitment pursuant to this section, the court shall specify a period of commitment
200 not to exceed seven years or the juvenile's twenty-first birthday, whichever shall occur first.

201 D. Upon receipt of a juvenile committed under the provisions of this section, the Department shall
202 evaluate the juvenile for the purpose of considering placement of the juvenile in an appropriate learning
203 center for the time prescribed by the committing court. Such a placement decision shall be made based
204 on the welfare of the juvenile.

205 E. The court which commits the juvenile to the Department under this section shall have continuing
206 jurisdiction over the juvenile throughout his commitment. The continuing jurisdiction of the court shall
207 not prevent the Department from removing the juvenile from a learning center without prior court
208 approval for the sole purposes of routine or emergency medical treatment, routine educational services,
209 or family emergencies.

210 F. Any juvenile committed under the provisions of this section shall not be released at a time earlier
211 than that specified by the court in its dispositional order except as provided for in § 16.1-285.2. The
212 Department may petition the committing court for a hearing as provided for in § 16.1-285.2 for an
213 earlier release of the juvenile when good cause exists for an earlier release. In addition, the Department
214 shall petition the committing court for a determination as to the continued commitment of each juvenile
215 sentenced under this section at least sixty days prior to the second anniversary of the juvenile's date of
216 commitment and sixty days prior to each annual anniversary thereafter.

217 § 16.1-299. (For effective date - See note) Fingerprints and photographs of juveniles.

218 A. Fingerprints of a juvenile fourteen years of age or older who is charged with a delinquent act
219 which would be a felony if committed by an adult *or a juvenile of any age who is charged with an*
220 *offense which would be a Class 1, 2 or 3 felony or a felony punishable by statutorily authorized term of*
221 *imprisonment for at least five years* shall be taken and filed with the juvenile court by law-enforcement
222 officers on forms provided by the Central Criminal Records Exchange. Photographs may also be taken
223 and filed by local law-enforcement officers. Fingerprints of a juvenile thirteen years of age or older who
224 is charged with bodily wounding as provided in § 18.2-51 or § 18.2-52, use of a firearm in committing a
225 felony as provided in § 18.2-53.1, attempted poisoning as provided in § 18.2-54.1, extortion as provided
226 in § 18.2-59, robbery, rape as provided in § 18.2-61, forcible sodomy as provided in § 18.2-67.1,
227 inanimate object sexual penetration as provided in § 18.2-67.2, grand larceny as provided in § 18.2-95,
228 burglary as provided in §§ 18.2-89 through 18.2-91, arson and related crimes as provided in §§ 18.2-77
229 through 18.2-88 or murder, or any attempt to commit the above mentioned felonies as provided in
230 § 18.2-25 or § 18.2-26 shall be taken and filed with the juvenile court by law-enforcement officers on
231 forms provided by the Central Criminal Records Exchange. Photographs may also be taken and filed by
232 local law-enforcement officers.

233 B. A juvenile may be fingerprinted and photographed regardless of age or offense if he has been
234 taken into custody for and charged with a violation of law, and a law-enforcement officer has
235 determined that there is probable cause to believe that latent fingerprints found during the investigation
236 of an offense are those of such juvenile.

237 C. The fingerprints and photographs authorized in subsections A and B shall be retained or disposed
238 of as follows:

239 1. If a petition is not filed against a juvenile whose fingerprints or photographs have been taken in
240 connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all
241 photographs shall be destroyed sixty days after fingerprints were taken.

242 2. If the juvenile court or the circuit court, pursuant to a transfer, waiver or appeal, finds a juvenile
243 not guilty of a charge of delinquency, the fingerprint card, all copies of the fingerprints and all
244 photographs shall be destroyed within sixty days of such finding. ~~However, all fingerprints and~~

photographs of a juvenile who is less than thirteen years of age and who is found guilty of a delinquent act shall also be destroyed.

3. If the court finds that a juvenile thirteen years of age or older has committed a delinquent act, the fingerprints and photographs may be retained in a local file pursuant to § 16.1-301 and the fingerprints may be entered into any police department's computer system by identification number or by any other method which insures the confidentiality of the juvenile's name.

4. If a juvenile ~~fourteen years of age or older~~ is (i) certified to the circuit court pursuant to Article 7 (§ 16.1-269.1 et seq.) of this chapter and is adjudicated delinquent or found guilty as an adult of the offense charged or (ii) adjudicated delinquent or found guilty in juvenile court of any offense which would be a felony if committed by an adult, ~~or if a juvenile thirteen years of age or older is found guilty of any of the offenses specified in subsection A of this section or an attempt to commit any such offense in a juvenile court and is adjudicated delinquent~~, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange by the clerk of the court which heard the case.

§ 16.1-299. (Delayed effective date - See notes) Fingerprints and photographs of juveniles.

A. Fingerprints of a juvenile fourteen years of age or older who is charged with a delinquent act which would be a felony if committed by an adult *or a juvenile of any age is charged with an offense which would be a Class 1, 2 or 3 felony or a felony punishable by a statutorily authorized minimum term of imprisonment for at least five years* shall be taken and filed with the juvenile court by law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs may also be taken and filed by local law-enforcement officers. Fingerprints of a juvenile thirteen years of age or older who is charged with bodily wounding as provided in § 18.2-51 or § 18.2-52, use of a firearm in committing a felony as provided in § 18.2-53.1, attempted poisoning as provided in § 18.2-54.1, extortion as provided in § 18.2-59, robbery, rape as provided in § 18.2-61, forcible sodomy as provided in § 18.2-67.1, inanimate object sexual penetration as provided in § 18.2-67.2, grand larceny as provided in § 18.2-95, burglary as provided in §§ 18.2-89 through 18.2-91, arson and related crimes as provided in §§ 18.2-77 through 18.2-88 or murder, or any attempt to commit the above mentioned felonies as provided in § 18.2-25 or § 18.2-26 shall be taken and filed with the juvenile court by law-enforcement officers on forms provided by the Central Criminal Records Exchange. Photographs may also be taken and filed by local law-enforcement officers.

B. A juvenile may be fingerprinted and photographed regardless of age or offense if he has been taken into custody for and charged with a violation of law, and a law-enforcement officer has determined that there is probable cause to believe that latent fingerprints found during the investigation of an offense are those of such juvenile.

C. The fingerprints and photographs authorized in subsections A and B shall be retained or disposed of as follows:

1. If a petition is not filed against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of law, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed sixty days after fingerprints were taken.

2. If the family court or the circuit court, pursuant to a transfer, waiver or appeal, finds a juvenile not guilty of a charge of delinquency, the fingerprint card, all copies of the fingerprints and all photographs shall be destroyed within sixty days of such finding. ~~However, all fingerprints and photographs of a juvenile who is less than thirteen years of age and who is found guilty of a delinquent act shall also be destroyed.~~

3. If the court finds that a juvenile thirteen years of age or older has committed a delinquent act, the fingerprints and photographs may be retained in a local file pursuant to § 16.1-301 and the fingerprints may be entered into any police department's computer system by identification number or by any other method which insures the confidentiality of the juvenile's name.

4. If a juvenile ~~fourteen years of age or older~~ is (i) certified to the circuit court pursuant to Article 7 (§ 16.1-269.1 et seq.) of this chapter and is adjudicated delinquent or found guilty as an adult of the offense charged or (ii) adjudicated delinquent or found guilty in family court of any offense which would be a felony if committed by an adult, ~~or if a juvenile thirteen years of age or older is found guilty of any of the offenses specified in subsection A of this section or an attempt to commit any such offense in a juvenile court and is adjudicated delinquent~~, copies of his fingerprints and a report of the disposition shall be forwarded to the Central Criminal Records Exchange by the clerk of the court which heard the case.

§ 16.1-306. (For effective date - See note) Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55, the clerk of the juvenile and domestic relations district court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records connected with any proceeding concerning a juvenile in such court, if such juvenile has attained the age of nineteen years and five years have elapsed since the date of the last hearing in

any case of the juvenile which is subject to this section. However, if the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult, or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of twenty-nine.

B. In all files in which the court records concerning a juvenile contain a finding of guilty of a delinquent act which would be a felony if committed by an adult or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained and available for inspection as provided in § 16.1-305.

C. Except in cases where a juvenile fourteen years of age or older at the time of the offense was found guilty of a delinquent act which would be a felony if committed by an adult *or a juvenile of any age was found guilty of a delinquent act which would be a Class 1, 2 or 3 felony or a felony punishable by a statutorily authorized minimum term of imprisonment for at least five years if committed by an adult*, a person who has been the subject of a delinquency or traffic proceeding and whose records fall within the provisions of subsection B hereof may, after ten years since the date of the last hearing in any case of the juvenile which is subject to this section, file a motion requesting the destruction of all records pertaining to his case. Notice of such motion shall be given to the attorney for the Commonwealth. After a hearing on the matter, if the court grants the motion, copies of the order shall be sent to offices or agencies that are repositories of such records, and all such offices and agencies shall comply with the order.

D. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the destruction of all records pertaining to the charge of such an act of delinquency. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

E. Each person shall be notified of his rights under subsections A, C and D of this section at the time of his dispositional hearing.

F. Upon destruction of the records of a proceeding as provided in subsections A, B, C and D, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

G. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket sheet.

§ 16.1-306. (Delayed effective date - See notes) Expungement of court records.

A. Notwithstanding the provisions of § 16.1-69.55 and except for adoption records governed by § 63.1-235, the clerk of the family court shall, on January 2 of each year or on a date designated by the court, destroy its files, papers and records connected with any proceeding concerning a juvenile in such court, if such juvenile has attained the age of nineteen years and five years have elapsed since the date of the last hearing in any case of the juvenile which is subject to this section. However, if the juvenile was found guilty of a delinquent act which would be a felony if committed by an adult, or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles, the records shall be destroyed when the juvenile has attained the age of twenty-nine.

B. In all files in which the court records concerning a juvenile contain a finding of guilty of a delinquent act which would be a felony if committed by an adult or an offense for which the clerk is required by § 46.2-383 to furnish an abstract to the Department of Motor Vehicles together with findings of not innocent of other acts, all of the records of such juvenile subject to this section shall be retained and available for inspection as provided in § 16.1-305.

C. Except in cases where a juvenile fourteen years of age or older at the time of the offense was found guilty of a delinquent act which would be a felony if committed by an adult *or a juvenile of any age is found guilty of an offense which would be a Class 1, 2 or 3 felony or a felony punishable by a statutorily authorized minimum term of imprisonment for at least five years if committed by an adult*, a person who has been the subject of a delinquency or traffic proceeding and whose records fall within the provisions of subsection B hereof may, after ten years since the date of the last hearing in any case of the juvenile which is subject to this section, file a motion requesting the destruction of all records pertaining to his case. Notice of such motion shall be given to the attorney for the Commonwealth. After a hearing on the matter, if the court grants the motion, copies of the order shall be sent to offices or agencies that are repositories of such records, and all such offices and agencies shall comply with the order.

D. A person who has been the subject of a delinquency or traffic proceeding and (i) has been found innocent thereof or (ii) such proceeding was otherwise dismissed, may file a motion requesting the

destruction of all records pertaining to the charge of such an act of delinquency. Notice of such motion shall be given to the attorney for the Commonwealth. Unless good cause is shown why such records should not be destroyed, the court shall grant the motion, and shall send copies of the order to all officers or agencies that are repositories of such records, and all such officers and agencies shall comply with the order.

E. Each person shall be notified of his rights under subsections A, C and D of this section at the time of his dispositional hearing.

F. Upon destruction of the records of a proceeding as provided in subsections A, B, C and D, the violation of law shall be treated as if it never occurred. All index references shall be deleted and the court and law-enforcement officers and agencies shall reply and the person may reply to any inquiry that no record exists with respect to such person.

G. All docket sheets shall be destroyed in the sixth year after the last hearing date recorded on the docket sheet.

§ 18.2-308.2. Possession or transportation of firearms or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of twenty-nine who was found guilty as a juvenile fourteen years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, *or as a juvenile of any age of an offense which would be a Class 1, 2 or 3 felony or a felony punishable by a statutorily authorized minimum term of imprisonment for at least five years* whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in § 18.2-308 A. A violation of this section shall be punishable as a Class 6 felony. Any firearm or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or other weapon while carrying out his duties as a member of the armed forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is