

LD2036386

**HOUSE BILL NO. 2518**

Offered January 23, 1995

*A BILL to amend and reenact §§ 16.1-228, 16.1-269.1, 16.1-269.3, 16.1-269.4, 16.1-269.6 and 16.1-272 of the Code of Virginia, as they are currently effective and as they may become effective, relating to juvenile offenders; transfer for trial as an adult.*

Patrons—O'Brien, Albo, Cox, McClure, McDonnell, Newman, Reynolds, Rollison, Sherwood and Wagner; Senators: Barry and Benedetti

Referred to Committee for Courts of Justice

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

**1. That §§16.1-228, 16.1-269.1, 16.1-269.3, 16.1-269.4, 16.1-269.6 and 16.1-272 of the Code of Virginia, as they are currently effective and as they may become effective, are amended and reenacted, as follows:**

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person eighteen years of age or older, *or sixteen years of age or older if charged with a violent crime.*

"Child," "juvenile" or "minor" means a person less than eighteen years of age, *other than a person sixteen years of age and older who is charged with a violent crime.*

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

"Child in need of services" means a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, and (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without

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HB2518

60 success; or

61 2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or  
62 placement authority, remains away from or habitually deserts or abandons his family or lawful custodian  
63 or escapes or remains away without proper authority from a residential care facility in which he has  
64 been placed by the court, and (i) such conduct presents a clear and substantial danger to the child's life  
65 or health, (ii) the child or his family is in need of treatment, rehabilitation or services not presently  
66 being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation  
67 or services needed by the child or his family.

68 "The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile  
69 and domestic relations district court of each county or city.

70 "Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an  
71 ordinance of any city, county, town or service district, or under federal law, (ii) a violation of  
72 § 18.2-308.7 or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an  
73 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if  
74 committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to  
75 take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or  
76 town.

77 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed  
78 a delinquent act prior to his eighteenth birthday, except where the jurisdiction of the juvenile court has  
79 been terminated under the provisions of § 16.1-269.6.

80 "Department" means the Department of Youth and Family Services and "Director" means the  
81 administrative head in charge thereof or such of his assistants and subordinates as are designated by him  
82 to discharge the duties imposed upon him under this law.

83 "Family abuse" means any act of violence, including any forceful detention, which results in physical  
84 injury or places one in reasonable apprehension of serious bodily injury and which is committed by a  
85 person against such person's family or household member.

86 "Family or household member" means (i) the person's spouse, whether or not he or she resides in the  
87 same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same  
88 home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,  
89 grandparents and grandchildren who reside in the same home with the person, (iv) the person's  
90 mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside  
91 in the same home with the person, (v) any individual who has a child in common with the person,  
92 whether or not the person and that individual have been married or have resided together at any time, or  
93 (vi) any individual who cohabits or who, within the previous twelve months, cohabited with the person,  
94 and any children of either of them then residing in the same home with the person.

95 "Foster care services" means the provision of a full range of casework, treatment and community  
96 services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or  
97 in need of services as defined in this section and his family when the child (i) has been identified as  
98 needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through  
99 an agreement between the local board of social services or a public agency designated by the  
100 community policy and management team and the parents or guardians where legal custody remains with  
101 the parents or guardians, (iii) has been committed or entrusted to a local board of social services or  
102 child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board  
103 pursuant to § 16.1-293.

104 "Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this  
105 chapter.

106 "Jail" or "other facility designed for the detention of adults" means a local or regional correctional  
107 facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding  
108 cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the  
109 transfer of a child to a juvenile facility.

110 "The judge" means the judge or the substitute judge of the juvenile and domestic relations district  
111 court of each county or city.

112 "This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in  
113 this chapter.

114 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to  
115 have physical custody of the child, to determine and redetermine where and with whom he shall live,  
116 the right and duty to protect, train and discipline him and to provide him with food, shelter, education  
117 and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal  
118 status created by court order of joint custody as defined in § 20-107.2.

119 "Permanent foster care placement" means the place of residence in which a child resides and in  
120 which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation  
121 and agreement between the placing agency and the place of permanent foster care that the child shall

remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Secure facility" or "detention home" means a local or regional public or private locked residential facility which has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

"Shelter care" means the temporary care of children in physically unrestricting facilities.

"State Board" means the State Board of Youth and Family Services.

"Status offender" means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

"Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

"Residual parental rights and responsibilities" means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.

*"Violent crime" means :*

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.

§ 16.1-228. (Delayed effective date) Definitions.

When used in this chapter, unless the context otherwise requires:

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1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or

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190 other appropriate agency has made a reasonable effort to effect the child's regular attendance without  
191 success; or

192 2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or  
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220 mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside  
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239 transfer of a child to a juvenile facility.

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244 the right and duty to protect, train and discipline him and to provide him with food, shelter, education

and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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*"Violent crime" means :*

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.

§ 16.1-269.1. Conditions for transfer to circuit court.

A. ~~If~~ Except as provided in subsection B, if a juvenile fourteen years of age or older 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. ~~Except as provided in subsection B, the~~ 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;

306 e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the  
307 number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of  
308 prior periods of probation, (iii) the number and nature of prior commitments to learning centers, (iv) the  
309 number and nature of previous residential and community-based treatments, (v) whether previous  
310 adjudications and commitments were for delinquent acts that involved the infliction of serious bodily  
311 injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;

312 f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional  
313 entity in this or any other jurisdiction;

314 g. The extent, if any, of the juvenile's degree of mental retardation or mental illness;

315 h. The juvenile's school record and education;

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

317 j. The juvenile's physical condition and physical maturity.

318 No transfer decision shall be precluded or reversed on the grounds that the court failed to consider  
319 any of the factors specified in subdivision A 4 of § 16.1-269.1.

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

323 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  
324 sixteen years of age or older, a Class 3 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2  
325 for: (i) murder under Article 1; (ii) mob-related felony under Article 2; (iii) kidnapping or abduction  
326 under Article 3; or (iv) assault or bodily wounding under Article 4; or

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

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

333 § 16.1-269.1. (Delayed effective date) Conditions for transfer to circuit court.

334 A. ~~If Except as provided in subsection B, if~~ a juvenile fourteen years of age or older is charged with  
335 an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney  
336 for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain  
337 jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court  
338 having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate  
339 circuit court shall be subject to the following conditions:

340 1. Notice as prescribed in §§ 16.1-263 and 16.1-264 shall be given to the juvenile and his parent,  
341 guardian, legal custodian or other person standing in loco parentis; or attorney;

342 2. The family court finds that probable cause exists to believe that the juvenile committed the  
343 delinquent act as alleged or a lesser included delinquent act which would be a felony if committed by  
344 an adult;

345 3. The juvenile is competent to stand trial. The juvenile is presumed to be competent and the burden  
346 is on the party alleging the juvenile is not competent to rebut the presumption by a preponderance of the  
347 evidence; and

348 4. ~~Except as provided in subsection B, the~~ The court finds by a preponderance of the evidence that  
349 the juvenile is not a proper person to remain within the jurisdiction of the family court. In determining  
350 whether a juvenile is a proper person to remain within the jurisdiction of the family court, the court  
351 shall consider, but not be limited to, the following factors:

352 a. The juvenile's age;

353 b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was  
354 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense  
355 was against persons or property, with greater weight being given to offenses against persons, especially  
356 if death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater  
357 than twenty years confinement if committed by an adult; (iv) whether the alleged offense involved the  
358 use of a firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise  
359 employing such weapon; and (v) the nature of the juvenile's participation in the alleged offense;

360 c. Whether the juvenile can be retained in the juvenile justice system long enough for effective  
361 treatment and rehabilitation;

362 d. The appropriateness and availability of the services and dispositional alternatives in both the  
363 criminal justice and juvenile justice systems for dealing with the juvenile's problems;

364 e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the  
365 number and nature of previous contacts with family or circuit courts, (ii) the number and nature of prior  
366 periods of probation, (iii) the number and nature of prior commitments to learning centers, (iv) the  
367 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 shall certify the juvenile for transfer to the appropriate circuit court without making the finding required by subdivision A 4 without holding a transfer hearing 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. Retention by juvenile court.

If the case under subsection A of § 16.1-269.1 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) Retention by family court

If the case under subsection A of § 16.1-269.1 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.

§ 16.1-269.4. Transfer to circuit court; appeal by juvenile.

If the juvenile court transfers the case pursuant to subsection A or B of § 16.1-269.1, the juvenile may, within ten days after the juvenile court's final decision, file a notice of appeal of the decision to the appropriate circuit court. A copy of the notice shall be furnished at the same time to the attorney for the Commonwealth.

§ 16.1-269.4. (Delayed effective date ) Transfer to circuit court; appeal by juvenile.

If the family court transfers the case pursuant to subsection A or B of § 16.1-269.1, the juvenile may, within ten days after the family court's final decision, file a notice of appeal of the decision to the appropriate circuit court. A copy of the notice shall be furnished at the same time to the attorney for the Commonwealth.

§ 16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and appeals.

A. Within seven days after receipt of notice of an appeal from the transfer decision by either the attorney for the Commonwealth or the juvenile, or if an appeal to a decision to transfer is not noted, upon expiration of the time in which to note such an appeal, the clerk of the court shall forward to the circuit court all papers connected with the case, including in any case transferred pursuant to subsection A of § 16.1-269.1 any report required by subsection B of § 16.1-269.2, as well as and a written court order setting forth the reasons for the juvenile court's decision. The clerk shall forward copies of the

429 order to the attorney for the Commonwealth and other counsel of record.

430 B. The circuit court shall, within a reasonable time after receipt of the case from the juvenile court;  
431 (i) examine all such papers, reports and orders; (ii) if ~~either the juvenile or the attorney for the~~  
432 ~~Commonwealth~~ has appealed the transfer decision, conduct a hearing to take further evidence on the  
433 issue of transfer, to determine if there has been substantial compliance with § 16.1-269.1, but without  
434 redetermining whether the juvenile court had sufficient evidence to find probable cause; (iii) *in cases*  
435 *transferred pursuant to subsection B of § 16.1-269.1, determine whether the juvenile is a proper person*  
436 *to remain within the jurisdiction of the juvenile court upon consideration of the factors set out in*  
437 *subdivision 4 of subsection A of § 16.1-269.1; and (iii iv) enter an order either remanding the case to the*  
438 *juvenile court or advising the attorney for the Commonwealth that he may seek an indictment.*

439 Upon advising the attorney for the Commonwealth that he may seek an indictment, the circuit court  
440 shall issue an order transferring the juvenile from the juvenile detention facility to an appropriate local  
441 correctional facility where the juvenile need no longer be entirely separate and removed from adults,  
442 unless, upon motion of counsel, good cause is shown for placement of the juvenile pursuant to the  
443 limitations of subdivision E (i), (ii), and (iii) of § 16.1-249.

444 C. The circuit court order advising the attorney for the Commonwealth that he may seek an  
445 indictment shall divest the juvenile court of its jurisdiction over the case as well as the juvenile court's  
446 jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme  
447 giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the  
448 juvenile following transfer and trial as an adult, the circuit court shall issue an order terminating the  
449 juvenile court's jurisdiction over that juvenile with respect to any future criminal acts alleged to have  
450 been committed by such juvenile and with respect to any pending allegations of delinquency which have  
451 not been disposed of by the juvenile court at the time of the criminal conviction. Upon receipt of the  
452 order terminating the juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall  
453 forward any pending petitions of delinquency for proceedings in the appropriate general district court.

454 D. The judge of the circuit court who reviewed the case after receipt from the juvenile court shall  
455 not, over the objection of any interested party, preside over the trial of such charge or charges.

456 E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not  
457 made before arraignment.

458 F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or  
459 § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included  
460 as applying to the provisions of § 19.2-243.

461 § 16.1-269.6. (Delayed effective date) Circuit court hearing; termination of family court jurisdiction;  
462 objections and appeals.

463 A. Within seven days after receipt of notice of an appeal from the transfer decision by ~~either the~~  
464 ~~attorney for the Commonwealth or the juvenile~~, or if an appeal to a decision to transfer is not noted,  
465 upon expiration of the time in which to note appeal, the clerk of the family court shall forward to the  
466 circuit court all papers connected with the case, including *in any case transferred pursuant to subsection*  
467 *A of § 16.1-269.1 any report required by subsection B of § 16.1-269.2 as well as and* a written court  
468 order setting forth the reasons for the family court's decision. The clerk shall forward copies of the order  
469 to the attorney for the Commonwealth and other counsel of record.

470 B. The circuit court shall, within a reasonable time after receipt of the case from the family court, (i)  
471 examine all such papers, reports and orders; (ii) if ~~either the juvenile or the attorney for the~~  
472 ~~Commonwealth~~ has appealed the transfer decision, conduct a hearing to take further evidence on the  
473 issue of transfer, to determine if there has been substantial compliance with § 16.1-269.1, but without  
474 redetermining whether the family court had sufficient evidence to find probable cause; (iii) *in cases*  
475 *transferred pursuant to subsection B of § 16.1-269.1, determine whether the juvenile is a proper person*  
476 *to remain within the jurisdiction of the juvenile court upon consideration of the factors set out in*  
477 *subdivision 4 of subsection A of § 16.1-269.1; and (iii iv) enter an order either remanding the case to the*  
478 *family court or advising the attorney for the Commonwealth that he may seek an indictment. Upon*  
479 *advising the attorney for the Commonwealth that he may seek an indictment, the circuit court shall issue*  
480 *an order transferring the juvenile from the juvenile detention facility to an appropriate local correctional*  
481 *facility where the juvenile need no longer be entirely separate and removed from adults, unless, upon*  
482 *motion of counsel, good cause is shown for placement of the juvenile pursuant to the limitations of*  
483 *subdivision E (i), (ii), and (iii) of § 16.1-249.*

484 C. The circuit court order advising the attorney for the Commonwealth that he may seek an  
485 indictment shall divest the family court of its jurisdiction over the case as well as the family court's  
486 jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme  
487 giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the  
488 juvenile following transfer and trial as an adult, the circuit court shall issue an order terminating the  
489 family court's jurisdiction over that juvenile with respect to any future criminal acts alleged to have been  
490 committed by such juvenile and with respect to any pending allegations of delinquency which have not



been disposed of by the family court at the time of the criminal conviction. Upon receipt of the order terminating the family court's jurisdiction over the juvenile, the clerk of the family court shall forward any pending petitions of delinquency for proceedings in the appropriate general district court.

D. The judge of the circuit court who reviewed the case after receipt from the family court shall not, over the objection of any interested party, preside over the trial of such charge or charges.

E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not made before arraignment.

F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included as applying to the provisions of § 19.2-243.

§ 16.1-272. Power of circuit court over juvenile offender.

A. In the hearing and disposition of felony cases properly before a circuit court having criminal jurisdiction of such offenses if committed by an adult, the court, after giving the juvenile the right to a trial by jury on the issue of guilt or innocence and upon a finding of guilty, may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this law for the hearing and disposition of cases in the juvenile court *except that a juvenile fourteen years of age or older whose case was required to be transferred pursuant to subsection B of § 16.1-269.1 and who is convicted of a violent crime shall be sentenced in accordance with the criminal laws of the Commonwealth.*

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the juvenile court and places the child on probation, the child may be supervised by a juvenile probation officer.

C. Whether the court sentences and commits the child as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

§ 16.1-272. (Delayed effective date) Power of circuit court over juvenile offender.

A. In the hearing and disposition of felony cases properly before a circuit court having criminal jurisdiction of such offenses if committed by an adult, the court, after giving the juvenile the right to a trial by jury on the issue of guilt or innocence and upon a finding of guilty, may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with the juvenile in the manner prescribed in this law for the hearing and disposition of cases in the family court, *except that a juvenile fourteen years of age or older whose case was required to be transferred pursuant to subsection B of § 16.1-269.1 and who is convicted of a violent crime shall be sentenced in accordance with the criminal law of the Commonwealth.*

B. If the circuit court decides to deal with the juvenile in the same manner as a case in the family court and places the child on probation, the child may be supervised by a juvenile probation officer of the family court.

C. Whether the court sentences and commits the child as a juvenile under this chapter or under the criminal law, in cases where the juvenile is convicted of a felony in violation of §§ 18.2-61, 18.2-63, 18.2-64.1, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.5, 18.2-370 or § 18.2-370.1 or, where the victim is a minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of § 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the Sex Offender Registry established pursuant to § 19.2-390.1.

**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 \$ 359,600.**