

LD1343724

## SENATE BILL NO. 807

Offered January 18, 1995

*A BILL to amend and reenact §§16.1-291, as it is currently effective and as it may become effective, and 16.1-309.1 of the Code of Virginia, relating to trial of juveniles as adults; exception to confidentiality.*

\_\_\_\_\_  
Patrons—Potts and Stolle

\_\_\_\_\_  
Referred to the Committee for Courts of Justice

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

**1. That §§ 16.1-291.1, as it is currently effective and as it may become effective, and 16.1-309.1 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, 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 *pursuant to this subsection* 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 *his* 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 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

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~~ a juvenile *fourteen years of age or older* for

INTRODUCED

SB807

60 transfer to the appropriate circuit court without making the finding required by subdivision A 4 if a the  
61 juvenile fourteen years of age or older is charged with:

62 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  
63 sixteen years of age or older, a Class 3 felony violation of Chapter 4 (§ 18.2-30 et seq.) of Title 18.2  
64 for: (i) murder under Article 1; (ii) mob-related felony under Article 2; (iii) kidnapping or abduction  
65 under Article 3; or (iv) assault or bodily wounding under Article 4; or

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

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

72 *C. If a juvenile thirteen years of age or older is charged with an offense involving the use or display  
73 of a firearm or other deadly weapon which, if committed by an adult, could be punishable by  
74 confinement in a state correctional facility, the court shall, on motion of the attorney for the  
75 Commonwealth and prior to a hearing on the merits, hold a transfer hearing and certify the juvenile for  
76 transfer to the appropriate circuit court subject to the following conditions:*

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

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

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

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

88 § 16.1-269.1. (Delayed effective date - See notes) Conditions for transfer to circuit court.

89 A. If a juvenile fourteen years of age or older is charged with an offense which would be a felony if  
90 committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a  
91 hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for  
92 proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses  
93 if committed by an adult. Any transfer to the appropriate circuit court pursuant to this subsection shall  
94 be subject to the following conditions:

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

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

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

103 4. Except as provided in subsection B, the court finds by a preponderance of the evidence that the  
104 juvenile is not a proper person to remain within the jurisdiction of the family court. In determining  
105 whether a juvenile is a proper person to remain within the jurisdiction of the family court, the court  
106 shall consider, but not be limited to, the following factors:

107 a. The juvenile's age;

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

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

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

119 e. The record and previous history of the juvenile in this or other jurisdiction, including (i) the  
120 number and nature of previous contacts with family or circuit courts, (ii) the number and nature of prior  
121 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.

*C. If a juvenile thirteen years of age or older is charged with an offense involving the use or display of a firearm or other deadly weapon which, if committed by an adult, could be punishable by confinement in a state correctional facility, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and certify the juvenile for transfer to the appropriate circuit court 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 his 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;*

*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;*

*If the court finds that the juvenile was not thirteen 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 have not been met, the case shall proceed as otherwise provided for by law.*

§ 16.1-309.1. Exception as to confidentiality.

Notwithstanding any other provision of this article, *whenever a child thirteen years of age or older is adjudicated delinquent on the basis of an act which would be a felony if committed by an adult, the court shall make public the name and address of the child and the nature of the offense for which he has been adjudicated delinquent.*

*In any other case,* where consideration of public interest requires, the judge shall make available to the public the name and address of a juvenile and the nature of the offense for which a juvenile has been adjudicated delinquent (i) for an act which would be a Class 1, 2 or 3 felony, forcible rape, robbery or burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 if committed by an adult or (ii) in any case where a juvenile is sentenced as an adult in circuit court.

~~Whenever~~ *Additionally, whenever a juvenile, charged with a delinquent act which would be forcible rape, robbery, burglary or a related offense as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2 or a Class 1, 2, or 3 felony if committed by an adult, becomes a fugitive from justice any time prior to or after final disposition of the charge, the attorney for the Commonwealth or, upon notice to the Commonwealth's attorney, the Department of Youth and Family Services or a locally operated court services unit may petition the court having jurisdiction of the offense to authorize public release of the juvenile's name, age, physical description and photograph, the charge for which he is sought or for which he was adjudicated and any other information which may expedite his apprehension. Upon a showing that the juvenile is a fugitive and for good cause, the court shall order release of this information to the public.*

183       Upon the request of a victim of a delinquent act which would be a felony if committed by an adult,  
184 the court may order that such victim be informed of the charge or charges brought, the findings of the  
185 court, and the disposition of the case. For purposes of this section, "victim" shall be defined as in  
186 § 19.2-299.1.

187       Upon request, the judge or clerk may disclose if an order of emancipation of a juvenile pursuant to  
188 § 16.1-333 has been entered, provided (i) the order is not being appealed, (ii) the order has not been  
189 terminated, or (iii) there has not been a judicial determination that the order is void ab initio.

190 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**  
191 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**  
192 **is \$269,700.**