

HOUSE BILL NO. 268

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Watts)

A BILL to amend and reenact §§ 16.1-269.1, 16.1-269.2, and 16.1-272 of the Code of Virginia, relating to juveniles; evidence of trafficking, sexual abuse, or rape by the alleged victim prior to or during the commission of the alleged offense; treatment and rehabilitation.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-269.1, 16.1-269.2, and 16.1-272 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-269.1. Trial in circuit court; preliminary hearing; direct indictment; remand.

A. Except as provided in subsections B and C, if a juvenile 14 years of age or older at the time of an alleged offense is charged with an offense which would be a felony if committed by an adult, the court shall, on motion of the attorney for the Commonwealth and prior to a hearing on the merits, hold a transfer hearing and may retain jurisdiction or transfer such juvenile for proper criminal proceedings to the appropriate circuit court having criminal jurisdiction of such offenses if committed by an adult. Any transfer to the appropriate circuit court shall be subject to the following conditions:

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

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

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

27 4. The court finds by a preponderance of the evidence that the juvenile is not a proper person to
28 remain within the jurisdiction of the juvenile court. In determining whether a juvenile is a proper person
29 to remain within the jurisdiction of the juvenile court, the court shall consider, but not be limited to, the
30 following factors:

- 31 a. The juvenile's age;
- 32 b. The seriousness and number of alleged offenses, including (i) whether the alleged offense was
33 committed in an aggressive, violent, premeditated, or willful manner; (ii) whether the alleged offense was
34 against persons or property, with greater weight being given to offenses against persons, especially if
35 death or bodily injury resulted; (iii) whether the maximum punishment for such an offense is greater than
36 20 years confinement if committed by an adult; (iv) whether the alleged offense involved the use of a
37 firearm or other dangerous weapon by brandishing, threatening, displaying or otherwise employing such
38 weapon; and (v) the nature of the juvenile's participation in the alleged offense;
- 39 c. Whether the juvenile can be retained in the juvenile justice system long enough for effective
40 treatment and rehabilitation;
- 41 d. The appropriateness and availability of the services and dispositional alternatives in both the
42 criminal justice and juvenile justice systems for dealing with the juvenile's problems;
- 43 e. The record and previous history of the juvenile in this or other jurisdictions, including (i) the
44 number and nature of previous contacts with juvenile or circuit courts, (ii) the number and nature of prior
45 periods of probation, (iii) the number and nature of prior commitments to juvenile correctional centers,
46 (iv) the number and nature of previous residential and community-based treatments, (v) whether previous
47 adjudications and commitments were for delinquent acts that involved the infliction of serious bodily
48 injury, and (vi) whether the alleged offense is part of a repetitive pattern of similar adjudicated offenses;
- 49 f. Whether the juvenile has previously absconded from the legal custody of a juvenile correctional
50 entity in this or any other jurisdiction;
- 51 g. The extent, if any, of the juvenile's degree of intellectual disability or mental illness;
- 52 h. The juvenile's school record and education;
- 53 i. The juvenile's mental and emotional maturity;~~and~~

54 j. The juvenile's physical condition and physical maturity; and
55 k. Any evidence that the juvenile was a victim of felonious criminal sexual assault in violation of
56 Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or trafficking in violation of Article 3 (§ 18.2-344
57 et seq.) of Chapter 8 of Title 18.2 by the alleged victim prior to or during the commission of the alleged
58 offense. This subdivision shall be construed to prioritize the successful treatment and rehabilitation of
59 juvenile victims of human trafficking and sex crimes who commit acts of violence against their abusers.
60 It is the intent of the General Assembly that these juveniles be viewed as victims and provided treatment
61 and services in the juvenile system.

62 No transfer decision shall be precluded or reversed on the grounds that the court failed to consider
63 any of the factors specified in subdivision 4.

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

69 C. The juvenile court shall conduct a preliminary hearing whenever a juvenile 16 years of age or
70 older is charged with murder in violation of § 18.2-33; felonious injury by mob in violation of § 18.2-41;
71 abduction in violation of § 18.2-48; malicious wounding in violation of § 18.2-51; malicious wounding of
72 a law-enforcement officer in violation of § 18.2-51.1; felonious poisoning in violation of § 18.2-54.1;
73 adulteration of products in violation of § 18.2-54.2; robbery in violation of subdivision B 1 or 2 of § 18.2-
74 58 or carjacking in violation of § 18.2-58.1; rape in violation of § 18.2-61; forcible sodomy in violation
75 of § 18.2-67.1; object sexual penetration in violation of § 18.2-67.2; manufacturing, selling, giving,
76 distributing, or possessing with intent to manufacture, sell, give, or distribute a controlled substance or an
77 imitation controlled substance in violation of § 18.2-248 if the juvenile has been previously adjudicated
78 delinquent on two or more occasions of violating § 18.2-248 provided the adjudications occurred after the
79 juvenile was at least 16 years of age; manufacturing, selling, giving, distributing, or possessing with intent
80 to manufacture, sell, give, or distribute methamphetamine in violation of § 18.2-248.03 if the juvenile has

81 been previously adjudicated delinquent on two or more occasions of violating § 18.2-248.03 provided the
82 adjudications occurred after the juvenile was at least 16 years of age; or felonious manufacturing, selling,
83 giving, distributing, or possessing with intent to manufacture, sell, give, or distribute anabolic steroids in
84 violation of § 18.2-248.5 if the juvenile has been previously adjudicated delinquent on two or more
85 occasions of violating § 18.2-248.5 provided the adjudications occurred after the juvenile was at least 16
86 years of age, provided the attorney for the Commonwealth gives written notice of his intent to proceed
87 pursuant to this subsection. Prior to giving written notice of his intent to proceed pursuant to this
88 subsection, the attorney for the Commonwealth shall submit a written request to the director of the court
89 services unit to complete a report as described in subsection B of § 16.1-269.2 unless waived by the
90 juvenile and his attorney or other legal representative. The report shall be filed with the court and mailed
91 or delivered to (i) the attorney for the Commonwealth and (ii) counsel for the juvenile, or, if the juvenile
92 is not represented by counsel, to the juvenile and a parent, guardian, or other person standing in loco
93 parentis with respect to the juvenile, within 21 days of the date of the written request. After reviewing the
94 report, if the attorney for the Commonwealth still intends to proceed pursuant to this subsection, he shall
95 then provide the written notice of such intent, which shall include affirmation that he reviewed the report.
96 The notice shall be filed with the court and mailed or delivered to counsel for the juvenile or, if the juvenile
97 is not then represented by counsel, to the juvenile and a parent, guardian or other person standing in loco
98 parentis with respect to the juvenile at least seven days prior to the preliminary hearing. If the attorney for
99 the Commonwealth elects not to give such notice, if he elects to withdraw the notice prior to certification
100 of the charge to the grand jury, or if the juvenile is 14 years of age or older, but less than 16 years of age,
101 he may proceed as provided in subsection A.

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

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

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

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

119 **§ 16.1-269.2. Admissibility of statement; investigation and report; bail.**

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

123 B. Prior to a transfer hearing pursuant to subsection A of § 16.1-269.1 or a preliminary hearing
124 pursuant to subsection C of § 16.1-269.1, a study and report to the court, in writing, relevant to the factors
125 set out in subdivision A 4 of § 16.1-269.1, as well as an assessment of any affiliation with a criminal street
126 gang as defined in § 18.2-46.1, shall be made by the probation services or other qualified agency
127 designated by the court. Such report shall include any relevant information supporting an allegation that
128 the juvenile was a victim of felonious criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.)
129 of Chapter 4 of Title 18.2 or trafficking in violation of Article 3 (§ 18.2-344 et seq.) of Chapter 8 of Title
130 18.2 by the alleged victim. It is the intent of the General Assembly that these juveniles be viewed as
131 victims and provided treatment and services in the juvenile system. Upon motion of the attorney for the
132 Commonwealth for a transfer hearing pursuant to subsection A of § 16.1-269.1, the attorney for the
133 Commonwealth shall provide notice to the designated probation services or other qualified agency of the

134 need for a transfer report. Counsel for the juvenile and the attorney for the Commonwealth shall have full
135 access to the study and report and any other report or data concerning the juvenile which are available to
136 the court. The court shall not consider the report until a finding has been made concerning probable cause.
137 If the court so orders, the study and report may be expanded to include matters provided for in § 16.1-273,
138 whereupon it may also serve as the report required by this subsection, but on the condition that it will not
139 be submitted to the judge who will preside at any subsequent hearings except as provided for by law.

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

144 **§ 16.1-272. Power of circuit court over juvenile offender.**

145 A. In any case in which a juvenile is indicted, the offense for which he is indicted and all ancillary
146 charges shall be tried in the same manner as provided for in the trial of adults, except as otherwise provided
147 with regard to sentencing. Upon a finding of guilty of any charge, the court shall fix the sentence without
148 the intervention of a jury. Nothing in this subsection shall be construed to require a court to review the
149 results of an investigation completed pursuant to § 16.1-273.

150 1. If a juvenile is convicted of a violent juvenile felony, for that offense and for all ancillary crimes
151 the court may order that (i) the juvenile serve a portion of the sentence as a serious juvenile offender under
152 § 16.1-285.1 and the remainder of such sentence in the same manner as provided for adults; (ii) the juvenile
153 serve the entire sentence in the same manner as provided for adults; or (iii) the portion of the sentence to
154 be served in the same manner as provided for adults be suspended conditioned upon successful completion
155 of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case
156 including, but not limited to, commitment under subdivision A 14 of § 16.1-278.8 or § 16.1-285.1.

157 2. If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile
158 offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal with
159 the juvenile in the manner prescribed in this chapter for the hearing and disposition of cases in the juvenile
160 court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion impose an

161 adult sentence and suspend the sentence conditioned upon successful completion of such terms and
162 conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

163 3. Notwithstanding any other provision of law, if the juvenile is convicted of any felony, the court
164 may in its discretion depart from any mandatory minimum sentence required by law or suspend any
165 portion of an otherwise applicable sentence.

166 4. If the juvenile is not convicted of a felony but is convicted of a misdemeanor, the court shall
167 deal with the juvenile in the manner prescribed by law for the disposition of a delinquency case in the
168 juvenile court.

169 5. If the court receives evidence that the juvenile was a victim of felonious criminal sexual assault
170 in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or trafficking in violation of Article
171 3 (§ 18.2-344 et seq.) of Chapter 8 of Title 18.2 by the alleged victim prior to or during the commission
172 of the offense, the court may set aside the guilty verdict, render the juvenile delinquent, and impose a
173 disposition consistent with § 16.1-278.8.

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

176 C. Whether the court sentences and commits the juvenile as a juvenile under this chapter or under
177 the criminal law, in cases where the juvenile is convicted of a felony in violation of § 18.2-61, 18.2-63,
178 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
179 minor or is physically helpless or mentally incapacitated as defined in § 18.2-67.10, subsection B of §
180 18.2-361 or subsection B of § 18.2-366, the clerk shall make the report required by § 19.2-390 to the Sex
181 Offender and Crimes Against Minors Registry established pursuant to Chapter 9 (§ 9.1-900 et seq.) of
182 Title 9.1.

183 D. In any case in which a juvenile is not sentenced as a juvenile under this chapter, the court shall,
184 in addition to considering any other factor and prior to imposing a sentence, consider (i) the juvenile's
185 exposure to adverse childhood experiences, early childhood trauma, or any child welfare agency and (ii)
186 the differences between juvenile and adult offenders.

