



The Virginia Success Story: Removing Youth from Adult Jail

On April 13, 2010, Virginia Governor Bob McDonnell signed into law a new measure that will help keep youth in Virginia out of adult jails.

Under current law, transferred and certified youth, some as young as 14, are allowed to be detained in adult jails, and held in the general population before their trials. While in the general population, the youth are placed at increased risk of being victimized before their trials and many, despite their being held for lengthy periods of time awaiting trial, receive no education or support services.

Championed by Senator Louise Lucas, SB 259, was passed unanimously by the Virginia House of Delegates and the Virginia Senate. The legislation creates a presumption that youth who are being tried as adults are held in juvenile detention centers pretrial and will only be placed in an adult jail if they are found by a judge to be a security or safety threat. The new law goes into effect on July 1, 2010. The full text of the new law is attached.

Numerous families and youth and a wide range of organizations were instrumental in supporting the passage of SB 259 as part of the "Don't Throw Away the Key Campaign."

For more information, visit: <http://dontthrowawaythekey.wordpress.com/>

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By Liz Ryan

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 16.1-249, 16.1-269.5, and 16.1-269.6 of the Code of Virginia, relating to places of confinement for juveniles.

[S 259]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-249, 16.1-269.5, and 16.1-269.6 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-249. Places of confinement for juveniles.

A. If it is ordered that a juvenile remain in detention or shelter care pursuant to § 16.1-248.1, such juvenile may be detained, pending a court hearing, in the following places:

1. An approved foster home or a home otherwise authorized by law to provide such care;
2. A facility operated by a licensed child welfare agency;
3. If a juvenile is alleged to be delinquent, in a detention home or group home approved by the Department;

4. Any other suitable place designated by the court and approved by the Department;

5. To the extent permitted by federal law, a separate juvenile detention facility located upon the site of an adult regional jail facility established by any county, city or any combination thereof constructed after 1994, approved by the Department of Juvenile Justice and certified by the Board of Juvenile Justice for the holding and detention of juveniles.

B. No juvenile shall be detained or confined in any jail or other facility for the detention of adult offenders or persons charged with crime except as provided in subsection D, E, F or G of this section.

C. The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately when a juvenile who is or appears to be under the age of 18 years is received at the facility, and shall deliver him to the court upon request, or transfer him to a detention facility designated by the court.

D. When a case is transferred to the circuit court in accordance with the provisions of subsection A of § 16.1-269.1 and an order is entered by the circuit court in accordance with § 16.1-269.6, or in accordance with the provisions of § 16.1-270 where the juvenile has waived the jurisdiction of the district court, or when the district court has certified a charge to the grand jury pursuant to subsection B or C of § 16.1-269.1, the juvenile, if in confinement, shall be placed in a juvenile secure facility, unless the court determines that the juvenile is a threat to the security or safety of the other juveniles detained or the staff of the facility, in which case the court may be transferred transfer the juvenile to a jail or other facility for the detention of adults and need no longer be entirely separate and removed from adults.

E. If, in the judgment of the custodian, a juvenile has demonstrated that he is a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the judge shall determine whether such juvenile should be transferred to another juvenile facility or, if the child is 14 years of age or older, a jail or other facility for the detention of adults; provided, that (i) the detention is in a room or ward entirely separate and removed from adults, (ii) adequate supervision is provided, and (iii) the facility is approved by the State Board of Corrections for detention of juveniles.

F. If, in the judgment of the custodian, it has been demonstrated that the presence of a juvenile in a facility creates a threat to the security or safety of the other juveniles detained or the staff of the home or facility, the custodian may transfer the juvenile to another juvenile facility, or, if the child is 14 years of age or older, a jail or other facility for the detention of adults pursuant to the limitations of clauses (i), (ii) and (iii) of subsection E for a period not to exceed six hours prior to a court hearing and an additional six hours after the court hearing unless a longer period is ordered pursuant to subsection E.

G. If a juvenile 14 years of age or older is charged with an offense which, if committed by an adult, would be a felony or Class 1 misdemeanor, and the judge or intake officer determines that secure detention is needed for the safety of the juvenile or the community, such juvenile may be detained for a period not to exceed six hours prior to a court hearing and six hours after the court hearing in a temporary lock-up room or ward for juveniles while arrangements are completed to transfer the juvenile to a juvenile facility. Such room or ward may be located in a building which also contains a jail or other facility for the detention of adults, provided (i) such room or ward is totally separate and removed from adults or juveniles transferred to the circuit court pursuant to Article 7 (§ 16.1-269.1 et seq.) of this chapter, (ii) constant supervision is provided, and (iii) the facility is approved by the State Board of

57 Corrections for the detention of juveniles. The State Board of Corrections is authorized and directed to
 58 prescribe minimum standards for temporary lock-up rooms and wards based on the requirements set out
 59 in this subsection.

60 G1. Any juvenile who has been ordered detained in a secure detention facility pursuant to
 61 § 16.1-248.1 may be held incident to a court hearing (i) in a court holding cell for a period not to
 62 exceed six hours provided the juvenile is entirely separate and removed from detained adults or (ii) in a
 63 nonsecure area provided constant supervision is provided.

64 H. If a judge, intake officer or magistrate orders the predispositional detention of persons 18 years of
 65 age or older, such detention shall be in an adult facility; however, if the predispositional detention is
 66 ordered for a violation of the terms and conditions of release from a juvenile correctional center, the
 67 judge, intake officer or magistrate may order such detention be in a juvenile facility.

68 I. The Departments of Corrections, Juvenile Justice and Criminal Justice Services shall assist the
 69 localities or combinations thereof in implementing this section and ensuring compliance herewith.
 70 § 16.1-269.5. Placement of juvenile.

71 The juvenile court may order placement of the transferred juvenile in either a local correctional
 72 facility as approved by the State Board of Corrections pursuant to the limitations of ~~subsection~~
 73 *subsections D and E* of § 16.1-249 or a juvenile detention facility.

74 § 16.1-269.6. Circuit court hearing; jury; termination of juvenile court jurisdiction; objections and
 75 appeals.

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

84 B. The circuit court, when practicable, shall, within 45 days after receipt of the case from the
 85 juvenile court pursuant to subsection A of § 16.1-269.1, (i) if either the juvenile or the attorney for the
 86 Commonwealth has appealed the transfer decision, examine all such papers, reports and orders and
 87 conduct a hearing to take further evidence on the issue of transfer, to determine if there has been
 88 substantial compliance with subsection A of § 16.1-269.1, but without redetermining whether the
 89 juvenile court had sufficient evidence to find probable cause; and (ii) enter an order either remanding
 90 the case to the juvenile court or advising the attorney for the Commonwealth that he may seek an
 91 indictment. A juvenile held continuously in secure detention shall be released from confinement if there
 92 is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may
 93 extend the time limitations for a reasonable period of time based upon good cause shown, provided the
 94 basis for such extension is recorded in writing and filed among the papers of the proceedings. ~~Upon~~
 95 ~~advising the attorney for the Commonwealth that he may seek an indictment, the circuit court may issue~~
 96 ~~an order transferring the juvenile from the juvenile detention facility to an appropriate local correctional~~
 97 ~~facility where the juvenile need no longer be entirely separate and removed from adults, unless, upon~~
 98 ~~motion of counsel, good cause is shown for placement of the juvenile pursuant to the limitations of~~
 99 ~~subdivision E (i), (ii), and (iii) of § 16.1-249.~~ However, in cases where a charge has been certified by
 100 the juvenile court to the grand jury pursuant to subsection B or C of § 16.1-269.1, the attorney for the
 101 Commonwealth may seek an indictment upon such charge and any ancillary charge without obtaining an
 102 order of the circuit court advising him that he may do so.

103 C. The circuit court order advising the attorney for the Commonwealth that he may seek an
 104 indictment shall divest the juvenile court of its jurisdiction over the case as well as the juvenile court's
 105 jurisdiction over any other allegations of delinquency arising from the same act, transaction or scheme
 106 giving rise to the charge for which the juvenile has been transferred. In addition, upon conviction of the
 107 juvenile following transfer or certification and trial as an adult, the circuit court shall issue an order
 108 terminating the juvenile court's jurisdiction over that juvenile with respect to any future criminal acts
 109 alleged to have been committed by such juvenile and with respect to any pending allegations of
 110 delinquency which have not been disposed of by the juvenile court at the time of the criminal
 111 conviction. However, such an order terminating the juvenile court's jurisdiction shall not apply to any
 112 allegations of criminal conduct that would properly be within the jurisdiction of the juvenile and
 113 domestic relations district court if the defendant were an adult. Upon receipt of the order terminating the
 114 juvenile court's jurisdiction over the juvenile, the clerk of the juvenile court shall forward any pending
 115 petitions of delinquency for proceedings in the appropriate general district court.

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

118 E. Any objection to the jurisdiction of the circuit court pursuant to this article shall be waived if not
119 made before arraignment.
120 F. The time period beginning with the filing of a notice of appeal pursuant to § 16.1-269.3 or
121 § 16.1-269.4 and ending with the order of the circuit court disposing of the appeal shall not be included
122 as applying to the provisions of § 19.2-243.

DON'T THROW AWAY THE KEY

VOTE "YES" ON SB 259

Incarcerating youth with adults isn't safe, isn't fair, and doesn't work.

SB 259 will require that a judge make a finding of dangerousness or security risk before juveniles as young as 14 who are being tried as adults can be transferred from a juvenile detention center to an adult jail pending trial. SB 259 creates a standard to help judges decide which youth belong in adult jails, protecting youth in detention centers from dangerous youth while insuring that incarcerated youth in general are protected from adult offenders.

- **This bill will not reduce the number of youth who are locked up pre-trial or after sentencing.** Those youth who are not placed in adult jails will still remain confined in juvenile detention centers.
- **Adult jails do not have the capacity to provide necessary educational, therapeutic, or other services to youth.** Many youth confined in Virginia's jails lack access to education and other services, damaging them and their opportunities for rehabilitation. Statistics show that many will ultimately receive juvenile sentences. Education and treatment should not be disrupted, as often happens currently, unless it is absolutely necessary.
- **Confinement in adult jails increases the likelihood of a youth's victimization and suicide risk.** A 2009 national study found that youth incarcerated in adult prisons and jails are at the highest risk for sexual assault and suicide while in confinement.
- **Incarcerating youth with adults makes communities less safe over time.** Research from around the country confirms that placing youth in the adult criminal justice system increases their likelihood of re-offending.
- **More than 80% of the youth who are tried as adults and in the custody of the Virginia Department of Juvenile Justice are African-American, even though only approximately 20% of youth in Virginia are African-American.** The numbers for Virginia's jails are likely similar or worse.
- **Juvenile detention centers can adequately confine these youth while also providing them with education and treatment.** Under this proposal, juvenile detention center superintendents will still have the ability to seek a transfer to jail if a youth is a danger to others.

Take for example, the story of a fifteen year old boy held in the Norfolk jail pending his trial for mugging. During his lengthy time in the facility, not only was he kept in a cell with older inmates who harassed him, but he was also essentially denied an education. The young man was only "given high school equivalency books to study" and periodic meetings with an instructor. Ultimately he was acquitted but his educational future was in jeopardy. Conversely, the Department of Juvenile Justice makes such services available, and even required, for most juvenile offenders including those between the ages of 18 and 21 in juvenile detention centers. (Matthew Roy, Jailing Young Offenders Poses Dilemma, The Virginian-Pilot (April 9, 2008).)



This flyer is produced by the JustChildren program of the Legal Aid Justice Center, 1000 Preston Ave., Suite A, Charlottesville, VA

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