

## LAWS REGARDING THE PROSECUTION OF JUVENILES AS ADULTS

The following information has been developed by the Office of the Attorney General regarding the prosecution of juveniles as adults:

Section [22.1-279.4](#) of the *Code of Virginia* states:

School boards shall provide information developed by the office of the Attorney General to students regarding laws governing the prosecution of juveniles as adults for the commission of certain crimes. Methods of providing such information may include, but not be limited to, public announcements in the schools, written notification to parents, publication in the student conduct manual, and inclusion in those materials distributed to parents pursuant to § [22.1-279.3](#).

The following information in question and answer format provides the notice required by this section of the *Code*.

**Who is a juvenile?** Section [16.1-228](#) of the *Code of Virginia* defines a juvenile as “a person less than 18 years of age.” Section [16.1-269.1](#) of the *Code* permits juveniles, 14 years of age or older at the time of an alleged offense, to be prosecuted as adults for specific crimes under certain circumstances. This process is called a transfer to the appropriate circuit court for trial as an adult.

**How is the age of the juvenile calculated?** Section [16.1-241](#) of the *Code of Virginia* provides that for the purpose of transferring a juvenile to circuit court for trial as an adult, the child must have been age 14 or older at the time of the offense.

**Under what circumstances does the law permit the transfer of juveniles for trial as adults?** The *Code of Virginia* permits the transfer of juveniles for trial as adults under three specific circumstances. Following is a description of each circumstance and the procedure that is followed in order to determine whether the student is transferred to circuit court.

### Circumstance #1

A transfer can occur when a juvenile, who is age 14 or older at the time of the offense, is charged with a crime which would be a felony if committed by an adult (§ [16.1-269.1 A](#). of the *Code of Virginia*). Offenses are either felonies or misdemeanors. Those offenses that are punishable by confinement in a state correctional facility or death are felonies; all

other offenses are misdemeanors. Felonies are classified for the purposes of punishment and sentencing into six classes. The authorized punishments for conviction of a felony are as follows:

- Class 1 felony – death if the person convicted was 18 years of age or older at the time of the offense and is not determined to be mentally retarded and a fine of not more than \$100,000. If the person was under 18 years of age at the time of the offense or is determined to be mentally retarded, the punishment shall be imprisonment for life or imprisonment for life and a fine of not more than \$100,000.
- Class 2 felony – imprisonment for life or for any term not less than twenty years or imprisonment for life or for any term not less than twenty years and a fine of not more than \$100,000.
- Class 3 felony – a term of imprisonment of not less than five years nor more than twenty years or a term of imprisonment of not less than five years nor more than twenty years and a fine of not more than \$100,000.
- Class 4 felony – a term of imprisonment of not less than two years nor more than ten years or a term of imprisonment of not less than two years nor more than ten years and a fine of not more than \$100,000.
- Class 5 felony – a term of imprisonment of not less than one year nor more than ten years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.
- Class 6 felony – a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.

(§§ [18.2-9](#) and [18.2-10](#) of the *Code of Virginia*)

In this circumstance, the Commonwealth's Attorney's office makes a formal request to the judge of the juvenile court for the juvenile to be transferred to the circuit court. The juvenile court holds a transfer hearing and may retain jurisdiction or transfer the juvenile to the appropriate circuit court for criminal proceedings. Any transfer to the circuit court is subject to the following conditions: (1) notice; (2) probable cause to believe that the juvenile committed the alleged delinquent act or a lesser included delinquent act; (3) the juvenile is competent to stand trial; and, (4) the juvenile is not a proper person to remain within the jurisdiction of the juvenile court.

The decision regarding whether the juvenile is not a proper person to remain within the jurisdiction of the juvenile court is based upon, but not limited to, the following factors:

- The juvenile's age
- The seriousness and number of alleged offenses Attachment A, Memo No. 057-12 February 24, 2012 3

- Whether the juvenile can be retained in the juvenile justice system long enough for effective treatment and rehabilitation
- The appropriateness and availability of the services and dispositional alternatives in both the criminal justice and juvenile justice systems needed by the juvenile
- The record and previous history of the juvenile in the jurisdiction where the alleged crime occurred or in other jurisdictions
- Whether the juvenile has escaped from a juvenile correctional entity in the past
- The extent, if any, of the juvenile's degree of mental retardation or mental illness
- The juvenile's school record and education
- The juvenile's mental and emotional maturity
- The juvenile's physical condition and maturity

### **Circumstance #2**

A transfer can occur when a juvenile 14 years of age or older is charged with an offense which would be a felony if committed by an adult. (§ [16.1-269.1 C](#) of the *Code of Virginia*)

In this circumstance, transfer is requested at the discretion of the Commonwealth's Attorney. If the Commonwealth's Attorney wishes to transfer the juvenile for trial as an adult, the juvenile court holds a preliminary hearing to determine whether there is probable cause to believe the juvenile committed the alleged delinquent act. Upon a finding of probable cause, the juvenile is transferred for prosecution as an adult. (§ [16.1-269.1 C](#) of the *Code of Virginia*)

### **Circumstance #3**

A transfer occurs when a juvenile 14 years of age or older at the time of the alleged offense is charged with capital murder, first or second degree murder, lynching or aggravated malicious wounding. (§ [16.1-269.1 B](#) of the *Code of Virginia*)

Transfer under this circumstance is automatic. Whenever a juvenile 14 years of age or older is charged with capital murder, first or second degree murder, lynching or aggravated malicious wounding, he or she must be tried as an adult. The juvenile court holds a preliminary hearing to determine whether there is probable cause to believe the juvenile committed the alleged delinquent act. Upon a finding of probable cause, the juvenile is transferred for prosecution as an adult. (§ [16.1-269.1 B](#) of the *Code of Virginia*)

**If a juvenile is transferred for prosecution as an adult on one offense, what happens if he or she has also been charged with other offenses?** If any one charge is transferred, all other charges of delinquency arising out of the same act will be transferred. (§ [16.1-269.6](#) of the *Code of Virginia*)

**Does the transfer impact subsequent alleged criminal offenses?** Yes. Once a juvenile is convicted of a crime as an adult in circuit court, all subsequent alleged criminal offenses of whatever nature, will be treated as adult offenses and no transfer hearing will be required. (§ [16.1-269.6](#) of the *Code of Virginia*)

**What happens when an adult is sentenced for a crime he or she committed as a juvenile?** When the juvenile court sentences an adult who has committed, before attaining the age of 18, an offense which would be a crime if committed by an adult, the court may impose a penalty up to a maximum of 12 months in jail and/or a fine up to \$2,500. (§ [16.1-284](#) of the *Code of Virginia*)

**What can happen if a juvenile is tried as an adult?** There are significant differences between a juvenile being tried as a juvenile and a juvenile being tried in the circuit court as an adult. In the juvenile system, a juvenile is given added protections because of his or her youth. First, records pertaining to the charge and adjudication of delinquency are confidential and may not be available to the public unless the crime was a felony. Second, if the adjudication is for a misdemeanor, the juvenile court record is expunged when the juvenile reaches the age of majority and is considered an adult. Third, a juvenile who is adjudicated delinquent remains in the juvenile system where a judge has discretion in the determination of the punishment or consequences to be imposed. In the juvenile system, the emphasis is on treatment and education.

In contrast, if a juvenile is prosecuted as an adult the issues and information related to the charge and the conviction of a crime are part of the public record. Because the information becomes an adult criminal record, it is not expunged when the juvenile reaches the age of 18. Additionally, the judge does not have the same discretion in sentencing. The judge in circuit court must impose at least the mandatory minimum sentence that is prescribed in sentencing guidelines. The circuit court does have the discretionary power to commit the juvenile to the juvenile system even if prosecuted as an adult.