



# COMMONWEALTH OF VIRGINIA

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September 1, 2009

The Honorable V. Thomas Forehand, Jr.  
Chief Judge, First Judicial Circuit of Virginia  
307 Albemarle Drive, Suite 400A  
Chesapeake, Virginia 23322-5580

Dear Judge Forehand:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issues Presented

In a recent opinion to you dated June 26, 2009 ("2009 Opinion"), I concluded that a circuit court is not required to enter an enabling order where the transfer decision of a juvenile and domestic relations district court ("juvenile court") pursuant to § 16.1-269.1(A) has not been appealed.<sup>1</sup> In light of the 2009 Opinion, you ask at what point the juvenile court is divested of jurisdiction in a case that is transferred to circuit court pursuant to § 16.1-269.1(A) when the transfer decision is not appealed. Further, you inquire at what point such juvenile may be moved from a juvenile detention facility to a local correctional facility.

## Response

It is my opinion that a juvenile court order pursuant to § 16.1-269.1(A) immediately divests the juvenile court of jurisdiction and such juvenile may be moved from the juvenile detention facility to a local correctional facility at any time after entry of such order by the juvenile court, unless execution of the order is suspended pending an appeal.

## Applicable Law and Discussion

Section 16.1-269.1(A) provides, in part, that:

if a juvenile fourteen 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. [Emphasis added.]

Thus, it appears that under § 16.1-269.1(A), the court has the discretion to retain jurisdiction or transfer the juvenile to circuit court. I note that § 16.1-241(A) provides, in part, that:

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<sup>1</sup>See 2009 Op. Va. Att'y Gen No. 09-031, \*1, available at <http://www.vaag.com/OPINIONS/2009opns/09-031-Forehand.pdf>.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

Further, you note that § 16.1-269.1(D) mirrors § 16.1-241(A) by providing, in pertinent part, that:

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

As discussed in the 2009 Opinion, § 16.1-269.6(B) applies only to cases coming before the circuit court on appeal from the juvenile court's transfer order.<sup>2</sup> However, §§ 16.1-241(A) and 16.1-269.1(D) are silent regarding the point at which the juvenile court is divested of jurisdiction of a case transferred pursuant to § 16.1-269.1(A) which is not appealed by either party.

Juvenile court orders that are appealed to the circuit court are not suspended pending an appeal except in circumstances which are not relevant to your question.<sup>3</sup> Therefore, even when the transfer

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<sup>2</sup>*Id.* at \*2-3.

<sup>3</sup>*See* VA. CODE ANN. § 16.1-298(A) (Supp. 2009) (providing that "a petition for or the pendency of an appeal or writ of error shall not suspend any judgment, order or decree of the juvenile court nor operate to discharge any child concerned or involved in the case from the custody of the court or other person, institution or agency to which the child has been committed unless so ordered by the judge of the juvenile court, the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a judge or justice thereof"); *see also* Martin v. Bales, 7 Va. App. 141, 145, 371 S.E.2d 823, 825 (1988) (holding that § 16.1-298 "provides that an appeal shall not suspend any order of the juvenile court unless ordered by the judge of the juvenile court or circuit court, or directed by an appellate court .... It is obvious that the legislature intended continuity of such orders pending appeal.").

decision under § 16.1-269.1(A) is appealed, the transfer order remains in effect until it is affirmed or reversed by the circuit court. Once the juvenile court enters an order transferring the case to the circuit court for trial as an adult, there is nothing more for the juvenile court to do in the matter.<sup>4</sup>

You further ask at what point a juvenile, who is transferred to circuit court for trial as an adult under § 16.1-269.1(A) and who does not appeal the transfer order, may be moved from the juvenile detention home to a local correctional facility. Section 16.1-249(D) provides, in part, that:

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, may be transferred to a jail or other facility for the detention of adults and need no longer be entirely separate and removed from adults.

Further, § 16.1-269.6(B) provides, in part, that:

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

Although neither § 16.1-249(D) nor § 16.1-269(B) specifically apply to a transfer decision under § 16.1-269.1(A) that is not appealed, the analysis regarding divestiture of juvenile court jurisdiction as discussed herein applies to this question. Once the juvenile court enters an order transferring the case to circuit court, the order effectively draws the dividing line between treatment of the defendant as a juvenile and his treatment as an adult. Therefore, a juvenile may be moved from a detention facility to a local correctional facility at any time after entry of the transfer order by the juvenile court.<sup>5</sup>

### **Conclusion**

Accordingly, it is my opinion that a juvenile court order pursuant to § 16.1-269.1(A) immediately divests the juvenile court of jurisdiction and such juvenile may be moved from the juvenile detention facility to a local correctional facility at any time after entry of such order by the juvenile court, unless execution of the order is suspended pending an appeal.

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<sup>4</sup>Since a transfer under § 16.1-269.1(B) or (C) divests the juvenile court of jurisdiction, it appears that a transfer under § 16.1-269.1(A) likewise would divest the juvenile court of jurisdiction.

<sup>5</sup>Placement in a local correctional facility for adults is discretionary, and the court may keep the juvenile in the detention facility for juveniles. See §§ 16.1-249(D), 16.1-269.6(B) (Supp. 2009).

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Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. C. Mims', with a stylized flourish at the end.

William C. Mims