

2022 SESSION

LEGISLATION NOT PREPARED BY DLS
INTRODUCED

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SENATE BILL NO. 770

Offered January 21, 2022

A *BILL to amend and reenact § 16.1-249 of the Code of Virginia, relating to places of confinement for juveniles.*

Patron—Marsden

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-249 of the Code of Virginia is 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, 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.

A juvenile younger than 11 years of age who is alleged to have committed one or more of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 and who is ordered to remain in detention or shelter care pursuant to § 16.1-248.1 pending a court hearing may only be detained in a place described in subdivision 1, 2, or 4, but under no circumstances shall such juvenile be detained pursuant to this section in a secure detention facility.

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.

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 transfer the juvenile to a jail or other facility for the detention of adults, provided that the facility is approved by the State Board of Local and Regional Jails for the detention of juveniles.

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 Local and Regional Jails 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

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59 temporary lock-up room or ward for juveniles while arrangements are completed to transfer the juvenile
60 to a juvenile facility. Such room or ward may be located in a building which also contains a jail or
61 other facility for the detention of adults, provided that (i) such room or ward is totally separate and
62 removed from adults or juveniles transferred to the circuit court pursuant to Article 7 (§ 16.1-269.1 et
63 seq.), (ii) constant supervision is provided, and (iii) the facility is approved by the State Board of Local
64 and Regional Jails for the detention of juveniles. The State Board of Local and Regional Jails is
65 authorized and directed to prescribe minimum standards for temporary lock-up rooms and wards based
66 on the requirements set out in this subsection.

67 G. 1. Any juvenile who has been ordered detained in a secure detention facility pursuant to
68 § 16.1-248.1 may be held incident to a court hearing (i) in a court holding cell for a period not to
69 exceed six hours, provided that the juvenile is entirely separate and removed from detained adults, or (ii)
70 in a nonsecure area, provided that constant supervision is provided.

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

75 *I. There shall be a presumption prohibiting the incarceration of a juvenile offender, who has been*
76 *convicted and sentenced as an adult in circuit court, in an adult correctional facility prior to his or her*
77 *eighteenth birthday; however, this presumption may be overcome if the judge determines that the*
78 *juvenile's behavior while incarcerated poses a continued threat to the security and safety of other*
79 *juveniles or staff at the juvenile facility where he or she is confined.*

80 *I. J.* The Departments of Corrections, Juvenile Justice and Criminal Justice Services shall assist the
81 localities or combinations thereof in implementing this section and ensuring compliance herewith.