

**OP. NO. 05-002**

**COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS  
DISTRICT COURT – JURISDICTION AND VENUE.**

**Proper venue for juvenile detention hearing is place where proceeding has  
been commenced.**

The Honorable Michael W. Lee  
Commonwealth's Attorney for City of Colonial Heights  
March 29, 2005

**Issue Presented**

You inquire concerning the proper venue for juvenile detention hearings. Because detention hearings must be held within a specific time period, you also ask whether a judge may hold a detention hearing in another venue within his judicial district.

**Response**

It is my opinion that the proper venue for a juvenile detention hearing is the place where the proceeding has been commenced.

**Background**

You relate that § 16.1-250 requires that juvenile detention hearings be held within seventy-two hours of the child having been taken into custody. You recognize that many judicial districts cover multiple geographical jurisdictions and that a judge may not always be scheduled to sit in a particular venue to fall within the seventy-two-hour period. For that reason, you indicate that a judge may wish to hold the detention hearing in another venue within his judicial district.

**Applicable Law and Discussion**

Section 16.1-243(1)(a) provides that with regard to original venue, "[i]f delinquency is alleged, [the case is to] be commenced in the city or county where the acts constituting the alleged delinquency occurred."<sup>1</sup> Further, § 16.1-250(A) provides that:

When a child has been taken into immediate custody and not released ..., such child shall appear before a judge on the next day on which the court sits within the county or city wherein the charge against the child is pending. In the event the court does not sit within the county or city on the following day, such child shall appear before a judge within a reasonable time, not to exceed seventy-two hours, after he has been taken into custody.

Thus, it is clear that the case must be commenced in the jurisdiction where the offense occurred and that the detention hearing must be held within seventy-two hours after the child has been taken into custody. It is, therefore, necessary to determine whether every step of the proceeding must take place within the venue in which the case is begun.

A 1980 opinion of the Attorney General concludes that

The term "proceeding" is defined in the general sense as "the form and manner of conducting judicial business before a court or judicial officer; regular or orderly progress in form of law; including all possible steps in an action from its commencement to the execution of judgment[.]" The Virginia Supreme Court has held that "proceeding" is broad enough to cover any act, measure, step or all steps in a court taken in conducting litigation, civil or criminal.[2]

A detention hearing is an integral step in the prosecution of a juvenile delinquency proceeding. It is at that hearing that the child and his parent are advised of the right to counsel, probable cause is determined, and the need to hold the child in secure detention is decided. In making these determinations, the court may hear all relevant and material evidence.<sup>3</sup>

While venue in juvenile delinquency cases may be transferred, "such transfer may occur only *after adjudication* in delinquency cases."<sup>4</sup> "The jurisdiction, practice, and procedure of the juvenile ... courts are entirely statutory ...."<sup>5</sup> Detention hearings are by their very nature preadjudication proceedings. Therefore, there is no statutory authority to transfer venue for a detention hearing to another location within the court's judicial district.

### **Conclusion**

Accordingly, it is my opinion that the proper venue for a juvenile detention hearing is the place where the proceeding has been commenced.

<sup>1</sup>Section 16.1-243(1)(a) also provides that "with the written consent of the child and the attorney for the Commonwealth for both jurisdictions, [the case may] be commenced in the city or county where the child resides[.]"

<sup>2</sup>1979-1980 Op. Va. Att'y Gen. 133, 134 (citations omitted).

<sup>3</sup>See VA. CODE ANN. § 16.1-250(G) (LexisNexis Repl. Vol. 2003).

<sup>4</sup>VA. CODE ANN. § 16.1-243(B)(1) (LexisNexis Repl. Vol. 2003) (emphasis added).

<sup>5</sup>Walker v. Dep't of Pub. Welfare, 223 Va. 557, 562, 290 S.E.2d 887, 890 (1982), *quoted in* 2004 Op. Va. Att'y Gen. 86, 86 (forthcoming July 2005), *available at* <http://www.vaag.com/media%20center/Opinions/2004opns/04-012w.htm>.

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