

OP. NO. 05-012

**COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS
COURTS – IMMEDIATE CUSTODY, ARREST, DETENTION AND SHELTER
CARE – TRANSFER AND WAIVER.**

**Juvenile convicted as adult may be housed in adult jail facility pending
transfer to Department of Juvenile Justice.**

The Honorable Robert J. McCabe
Sheriff for City of Norfolk
March 29, 2005

Issue Presented

You inquire concerning the appropriate facility in which to house a juvenile who has been transferred for trial as an adult and convicted by the circuit court, but sentenced in the manner prescribed for the disposition of cases in the juvenile court. You also ask whether a jail that is not certified to hold juveniles may nevertheless house such a convicted juvenile pending his transfer to the Department of Juvenile Justice.

Response

It is my opinion that a juvenile who has been convicted as an adult may be housed in an adult jail facility pending transfer to the Department of Juvenile Justice.

Applicable Law and Discussion

Section 16.1-249(B) provides that “[n]o 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.”

Section 16.1-249(D) provides:

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.

A 1995 opinion of the this Office concludes that a juvenile transferred for trial as an adult and convicted by the circuit court should be thereafter treated as an adult for all purposes.¹

Section 16.1-272(A)(2) provides that:

If the juvenile is convicted of any other felony, the court may sentence or commit the juvenile offender in accordance with the criminal laws of this Commonwealth or may in its discretion deal

with the juvenile in the manner prescribed in [Chapter 11] for the hearing and disposition of cases in the juvenile court, including, but not limited to, commitment under § 16.1-285.1 or may in its discretion impose an adult sentence and suspend the sentence conditioned upon successful completion of such terms and conditions as may be imposed in a juvenile court upon disposition of a delinquency case.

Thus, § 16.1-272(A)(2) allows the circuit court, upon conviction of a juvenile transferred for trial as an adult, to sentence the juvenile either as an adult or in the manner prescribed for the disposition of cases in the juvenile court. Nevertheless, it is the fact of “transfer” that allows the juvenile to be detained in the jail as an adult, and the ultimate disposition of the case is irrelevant to that determination.

Conclusion

Accordingly, it is my opinion that a juvenile who has been convicted as an adult may be housed in an adult jail facility pending transfer to the Department of Juvenile Justice.

¹See 1995 Op. Va. Att’y Gen. 109, 109-10, and opinions cited therein (reasoning that it was intent of General Assembly to permit juveniles who previously have been tried and convicted as adults, and who again are charged with commission of offenses classified as felonies to be housed with adult inmates).

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