

OP. NO. 05-037

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

**Juvenile court retains jurisdiction over probationer who has reached age
twenty-one prior to probation revocation hearing.**

The Honorable Harvey L. Bryant
Commonwealth's Attorney for the City of Virginia Beach
June 20, 2005

Issue Presented

You inquire concerning the proper court in which to bring a probation violation proceeding where the terms of probation were issued by a juvenile and domestic relations district court ("juvenile court") in its disposition of a delinquency case, and the probationer has reached the age of twenty-one prior to the proceeding.

Response

It is my opinion that the juvenile court retains jurisdiction over a probationer although he has reached the age of twenty-one prior to a probation revocation proceeding.

Background

You relate that you have a number of juvenile defendants that have been convicted of delinquent acts and placed on probation with specific terms and conditions. You note that the court often orders the defendants to make restitution or perform other conditions; however, they fail to perform as ordered. Additionally, you relate that the Commonwealth initiates probation violation proceedings, but occasionally a defendant is not apprehended until after he reaches the age of twenty-one or older. Thus, you inquire whether that proceeding should be brought in juvenile court or in a general district court.

Applicable Law and Discussion

Section 16.1-242 provides:

When jurisdiction has been obtained by the [juvenile] court in the case of any child, such jurisdiction may be retained by the court until such person becomes twenty-one years of age In any event, when such person reaches the age of twenty-one and a *prosecution has not been commenced against him*, he shall be *proceeded* against as an adult, even if he was a juvenile when the offense was committed.^[1] [Emphasis added.]

Section 16.1-291 provides:

A. A juvenile or person who violates an order of the juvenile court entered into pursuant to §§ 16.1-278.2 through 16.1-278.10, ... may be *proceeded* against for a revocation or modification of such order or parole status....

....

E. If a person adjudicated delinquent and found to have violated an order of the court or the terms of his probation or parole was a juvenile at the time of the original offense and is eighteen years of age or older when the court enters disposition for violation of the order of the court or the terms of his probation or parole, the dispositional alternative specified in § 16.1-284^[2] shall be available to the court. [Emphases added.]

The Supreme Court of Virginia has stated that "[t]he manifest intention of the legislature, clearly disclosed by its language, must be applied."³ "[T]ake the words as written' and give them their plain meaning."⁴ The word "proceeding" is not defined in the context of juvenile courts in Title 16.1. Absent a statutory definition, words are given their ordinary meaning.⁵ The word "proceeding" means "[t]he regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment."⁶ The Supreme Court of Virginia notes that the term "proceeding" is "broad enough to cover any act, measure, step or all steps in a course taken in conducting litigation, civil or criminal."⁷

The Court of Appeals of Virginia has considered whether a proceeding for violation of probation constitutes a separate misdemeanor prosecution for the purpose of counting the number of misdemeanor convictions required to commit a juvenile to the Department of Juvenile Justice.⁸ The Court found that the probation violation did not constitute a separate offense that could be counted toward the number of misdemeanors required for commitment.⁹ The probation violation was not a Class 1 misdemeanor if committed by an adult as required by statute, and it was not sufficient to commit the juvenile to the Department.¹⁰ The Court did not consider a probation violation to be a separate offense that required a new prosecution of the individual, but merely a continuation of the original case.

Section 16.1-242 requires that a person who has reached age twenty-one be prosecuted as an adult, even if he was a juvenile at the time of the commission of the offense. A probation violation proceeding is not a prosecution in the sense of the adjudication and disposition of a new offense. It simply is the continuation of the proceeding begun in the juvenile court. A petition for violation of probation should, therefore, be brought in the juvenile court. If the violation is found, the court may dispose of it in the manner provided in § 16.1-291(E).

Conclusion

Accordingly, it is my opinion that the juvenile court retains jurisdiction over a probationer although he has reached the age of twenty-one prior to a probation revocation proceeding.

¹"[A] defendant who is charged with the commission of a crime when a juvenile, [but not] tried therefor before he reaches [age twenty-one], is no longer within the

jurisdiction of the juvenile court but may be proceeded against as an adult." *Pruitt v. Guerry*, 210 Va. 268, 270-71, 170 S.E.2d 1, 3 (1969) (interpreting § 16.1-159, repealed, but substantially similar to § 16.1-242).

²"When the juvenile court sentences an adult who has committed, before attaining the age of eighteen, an offense which would be a crime if committed by an adult, the court may impose the penalties which are authorized to be imposed on adults for such violations, not to exceed the punishment for a Class 1 misdemeanor for a single offense or multiple offenses." Va. Code Ann. § 16.1-284 (LexisNexis Repl. Vol. 2003).

³*Barr v. Town & Country Props.*, 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)); see also 2001 Op. Va. Att'y Gen. 179, 180.

⁴*Birdsong Peanut Co. v. Cowling*, 8 Va. App. 274, 277, 381 S.E.2d 24, 26 (1989) (quoting *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985)), quoted in *Adkins v. Commonwealth*, 27 Va. App. 166, 169, 497 S.E.2d 896, 897 (1998); see also 2001 Op. Va. Att'y Gen. *supra* note 3, at 180.

⁵1987-1988 Op. Va. Att'y Gen. 513, 514.

⁶See Black's Law Dictionary 1241 (8th ed. 2004); see also 1979-1980 Op. Va. Att'y Gen. 133, 134 (defining "proceeding") (quoting Black's Law Dictionary 1368 (4th ed. 1968)).

⁷See *Sigmon v. Commonwealth*, 200 Va. 258, 267, 105 S.E.2d 171, 178 (1958).

⁸See *Salvatierra v. City of Falls Church*, 35 Va. App. 453, 546 S.E.2d 214 (2001). Section 16.1-278.8(A)(14) requires that a juvenile may only be committed on a conviction of a felony offense, a misdemeanor if the juvenile has a prior felony offense, or a fourth misdemeanor offense. At the time of the *Salvatierra* decision, only two misdemeanors were required. See *id.* at 456, 546 S.E.2d at 215.

⁹*Id.* at 458, 546 S.E.2d at 216.

¹⁰*Id.*

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