

001682980

HOUSE BILL NO. 700

Offered January 21, 2000

A BILL to amend and reenact §§ 16.1-241, 16.1-296, 16.1-298 and 17.1-405 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-283.1 and 16.1-296.2, relating to termination of parental rights; appeals.

 Patron—Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 16.1-296, 16.1-298 and 17.1-405 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 16.1-283.1 and 16.1-296.2 as follows:

§ 16.1-241. Jurisdiction.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought: ~~In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244; and~~

6. Who is charged with a traffic infraction as defined in § 46.2-100.

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 fourteen 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 fourteen 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.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

INTRODUCED

HB700

60 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
61 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
62 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
63 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
64 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party
65 with a legitimate interest shall not include any person (i) whose parental rights have been terminated by
66 court order, either voluntarily or involuntarily, or any other person whose interest in the child derives
67 from or through such person whose parental rights have been so terminated, including, but not limited
68 to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child
69 subsequently has been legally adopted, except where a final order of adoption is entered pursuant to
70 § 63.1-231, or (ii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or
71 subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result
72 of such violation. The authority of the juvenile court to consider a petition involving the custody of a
73 child shall not be proscribed or limited where the child has previously been awarded to the custody of a
74 local board of social services.

75 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
76 provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person
77 or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person
78 in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1.
79 Jurisdiction of the commitment and certification of adults shall be concurrent with the general district
80 court.

81 C. Except as provided in subsections D and H hereof, judicial consent to such activities as may
82 require parental consent may be given for a child who has been separated from his parents, guardian,
83 legal custodian or other person standing in loco parentis and is in the custody of the court when such
84 consent is required by law.

85 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married
86 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person
87 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person
88 standing in loco parentis (i) is not a resident of this Commonwealth, (ii) has his whereabouts unknown,
89 (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such
90 consent or provide such treatment when requested by the judge to do so.

91 E. Any person charged with deserting, abandoning or failing to provide support for any person in
92 violation of law.

93 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

94 1. Who has been abused or neglected;

95 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
96 or is otherwise before the court pursuant to subdivision A 4 of this section; or

97 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
98 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
99 conduct of the child complained of in the petition.

100 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other
101 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services
102 which are required by law to be provided for that child or such child's parent, guardian, legal custodian
103 or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not
104 exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

105 H. Judicial consent to apply for a work permit for a child when such child is separated from his
106 parents, legal guardian or other person standing in loco parentis.

107 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or
108 neglect of children or with any violation of law which causes or tends to cause a child to come within
109 the purview of this law, or with any other offense against the person of a child. In prosecution for
110 felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not
111 there is probable cause.

112 J. All offenses in which one family or household member is charged with an offense in which
113 another family or household member is the victim and all offenses under § 18.2-49.1.

114 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
115 determining whether or not there is probable cause. Any objection based on jurisdiction under this
116 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
117 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it
118 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for
119 challenging directly or collaterally the jurisdiction of the court in which the case is tried.

120 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
121 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such

parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.1-248.6:1.

U. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to allow notice to an authorized person. After a hearing, a judge may authorize a physician to perform an abortion upon finding that the minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the minor is not mature, the judge shall, after a hearing, determine whether the performance of an abortion upon the minor without notice to an authorized person would be in the minor's best interest, and if the court finds that the abortion would be in the minor's best interest, it shall so authorize a physician.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Court proceedings under this subsection shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard as soon as practicable but in no event later than four days after the petition is filed.

Notwithstanding any other provision of law, an expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order authorizing an abortion without notification shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without notice to an authorized person.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless notice has been given or the minor delivers to the physician a court order entered pursuant to this section. However, neither notice nor judicial authorization shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.1-248.2 and reports the suspected abuse or neglect in accordance with § 63.1-248.3; or if, in the attending physician's good faith medical judgment, (i) the abortion is medically necessary immediately to avert the minor's death or (ii) there is insufficient time to provide the required notice or judicial authorization because a delay would create a serious risk of substantial impairment of a major bodily function or substantial physical injury. The attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor.

183 "Notice" means that (i) the physician or his agent has given actual notice of his intention to perform
184 such abortion to an authorized person, either in person or by telephone, at least twenty-four hours
185 previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort
186 to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to
187 such person at his usual place of abode, with return receipt requested, at least seventy-two hours prior to
188 the performance of the abortion; or (iii) at least one authorized person is present with the minor seeking
189 the abortion; or (iv) the minor has delivered to the physician a written statement signed by an authorized
190 person and witnessed by a competent adult that the authorized person knows of the minor's intent to
191 have an abortion.

192 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical
193 procedure or to induce a miscarriage as provided in §§ 18.2-72, 18.2-73 or § 18.2-74.

194 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid
195 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any
196 of the armed forces of the United States; (iii) willingly living separate and apart from his or her parents
197 or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of
198 emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

199 W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of this chapter relating to standby
200 guardians for minor children.

201 The ages specified in this law refer to the age of the child at the time of the acts complained of in
202 the petition.

203 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of
204 any process in a proceeding pursuant to subdivision 3 of subsection A or subsection B, D, M or R of
205 this section.

206 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of
207 subsection V shall be guilty of a Class 3 misdemeanor.

208 § 16.1-283.1. *Juries; termination of residual parental rights.*

209 *If trial by jury is directed on a petition to terminate residual parental rights brought pursuant to*
210 *§ 16.1-283, the juvenile court shall use the list of jurors for the current term of the circuit court to*
211 *which criminal appeals lie. Article 4 (§ 8.01-353 et seq.) of Chapter 11 of Title 8.01 shall otherwise*
212 *apply to juries used in termination proceedings.*

213 § 16.1-296. Jurisdiction of appeals; procedure.

214 A. ~~From~~ Except as provided in § 16.1-296.2 for appeals in cases involving the termination of
215 parental rights, from any final order or judgment of the juvenile court affecting the rights or interests of
216 any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a
217 final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family
218 Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within thirty days
219 from entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of
220 family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be
221 taken.

222 B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney
223 for the Commonwealth a report incorporating the results of any investigation conducted pursuant to
224 § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney
225 for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the
226 court has made its findings on the issues subject to appeal. After final determination of the case, the
227 report and all copies thereof shall be forthwith returned to such juvenile court.

228 C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition
229 pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act
230 may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the
231 alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall
232 be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the
233 jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of
234 § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237
235 or § 16.1-273.

236 ~~C4D.~~ In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on
237 a disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except
238 in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to
239 this subsection, any records or portions thereof relating to such closed proceedings shall remain
240 confidential.

241 D. When an appeal is taken in a case involving termination of parental rights brought under
242 § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the
243 perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the
244 docket of the Court.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

F. In all other cases on appeal, proceedings in the circuit court shall conform to the equity practice where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court.

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal. An appeal will not be perfected unless such appeal bond as may be required is filed within thirty days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal.

This subsection shall not apply to release on bail pursuant to other subsections of this section or § 16.1-298.

I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter.

J. In any case which has been referred or transferred from a circuit court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had been referred or transferred.

§ 16.1-296.2. Appeals to Court of Appeals.

From any final order or judgment of the juvenile court entered pursuant to § 16.1-283 on a petition seeking termination of residual parental rights, an appeal may be taken to the Court of Appeals as provided in § 17.1-405. The provisions of Title 8.01 and Title 20 and the Rules of the Supreme Court governing appeals in suits in equity shall apply to appeals pursuant to this section.

An appeal pursuant to this section shall be given precedence on the docket of the appellate court.

§ 16.1-298. Effect of petition for or pendency of appeal; bail.

A. Except as provided herein, 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.

B. The judgment, order or decree of the juvenile court shall be suspended upon a petition for or the pendency of an appeal or writ of error:

1. In cases of delinquency in which the final order of the juvenile court is pursuant to subdivision 8, 9, 10, 12, 14, or 15 of § 16.1-278.8.

306 2. In cases involving a child and any local ordinance.

307 3. In cases involving any person over the age of eighteen years.

308 4. *In cases involving termination of residual parental rights.*

309 Such suspension as is provided for in this subsection shall not apply to (i) an order for support of a
310 spouse, parent or child or to a preliminary protective order issued pursuant to § 16.1-253, (ii) an order
311 disposing of a motion to reconsider relating to participation in continuing programs pursuant to
312 § 16.1-289.1, (iii) a protective order in cases of family abuse issued pursuant to § 16.1-279.1 or a
313 protective order entered in conjunction with a disposition pursuant to §§ 16.1-278.2, 16.1-278.4,
314 16.1-278.5, 16.1-278.6 or § 16.1-278.8, or (iv) a protective order issued pursuant to § 19.2-152.10,
315 unless so ordered by the judge of a circuit court or directed in a writ of supersedeas by the Court of
316 Appeals or the Supreme Court.

317 C. In cases where the order of the juvenile court is suspended pursuant to subsection B hereof or by
318 order of the juvenile court or the circuit court, bail may be required as provided for in § 16.1-135.

319 § 17.1-405. Appellate jurisdiction - Administrative agency, Virginia Workers' Compensation
320 Commission, and domestic relations appeals.

321 Any aggrieved party may appeal to the Court of Appeals from:

322 1. Any final decision of a circuit court on appeal from a decision of an administrative agency;

323 2. Any final decision of the Virginia Workers' Compensation Commission;

324 3. Any final judgment, order, or decree of a circuit court involving:

325 a. Affirmance or annulment of a marriage;

326 b. Divorce;

327 c. Custody;

328 d. Spousal or child support;

329 e. The control or disposition of a child;

330 f. Any other domestic relations matter arising under Title 16.1 or Title 20; or

331 g. Adoption under Chapter 11 (§ 63.1-220 et seq.) of Title 63.1;

332 4. *Any final order or judgment of a juvenile and domestic relations district court entered pursuant to*
333 *§ 16.1-283 in a case involving the termination of residual parental rights; or*

334 4.5. Any interlocutory decree or order entered in any of the cases listed in this section (i) granting,
335 dissolving, or denying an injunction or (ii) adjudicating the principles of a cause.