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**HOUSE BILL NO. 424**

Offered January 9, 2002

Prefiled January 8, 2002

*A BILL to amend and reenact § 16.1-247 of the Code of Virginia, relating to duties of a person taking a child into custody.*

\_\_\_\_\_  
 Patron—McQuigg

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 Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 16.1-247 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-247. Duties of person taking child into custody.

A. A person taking a child into custody pursuant to the provisions of § 16.1-246 A, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto, bring the child to the judge or intake officer of the court and the judge, intake officer or arresting officer shall, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

B. A person taking a child into custody pursuant to the provisions of subsection B, C or D of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to such child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for such child and issue oral counsel and warning as may be appropriate; or

2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis upon their promise to bring the child before the court when requested; or

3. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis. Nothing herein shall prevent the child from being held for the purpose of administering a blood or breath test to determine the alcoholic content of his blood where the child has been taken into custody pursuant to § 18.2-266.

C. A person taking a child into custody pursuant to the provisions of subsections E and F of § 16.1-246, during such hours as the court is open, shall, with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to the institution, facility or home from which he ran away or escaped; or

2. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the institution, facility or home in which the child had been placed and orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

D. A person taking a child into custody pursuant to the provisions of § 16.1-246 A, during such hours as the court is not open, shall with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child taken into custody pursuant to a warrant on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2; or

2. Place the child in a detention home or in shelter care; or

3. Place the child in a jail subject to the provisions of § 16.1-249.

E. A person taking a child into custody pursuant to the provisions of subsection B, C or D of § 16.1-246 during such hours as the court is not open, shall:

1. Release the child pursuant to the provisions of subdivision B 1 or B 2 of this section; or

2. Release the child on bail or recognizance pursuant to Chapter 9 of Title 19.2; or

3. Place the child taken into custody pursuant to § 16.1-246 B in shelter care after the issuance of a detention order pursuant to § 16.1-255; or

4. Place the child taken into custody pursuant to subsection C or D of § 16.1-246 in shelter care or

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59 in a detention home after the issuance of a warrant by a magistrate; or

60 5. Place the child in a jail subject to the provisions of § 16.1-249 after the issuance of a warrant by a  
61 magistrate; or

62 6. In addition to any other provisions of this subsection, detain the child for a reasonably necessary  
63 period of time in order to administer a breath or blood test to determine the alcohol content of his  
64 blood, if such child was taken into custody pursuant to § 18.2-266.

65 F. A person taking a child into custody pursuant to the provisions of § 16.1-246 E, during such hours  
66 as the court is not open, shall:

67 1. Release the child to the institution or facility from which he ran away or escaped; or

68 2. Detain the child in a detention home or in a jail subject to the provisions of § 16.1-249 after the  
69 issuance of a warrant by a magistrate.

70 G. A person taking a child into custody pursuant to the provisions of § 16.1-246 F, during such  
71 hours as the court is not open, shall:

72 1. Release the child to the facility or home from which he ran away; or

73 2. Detain the child in shelter care after the issuance of a detention order pursuant to § 16.1-255 or  
74 after the issuance of a warrant by a magistrate.

75 H. If a parent, guardian or other custodian fails, when requested, to bring the child before the court  
76 as provided in subdivisions B 2 and E 1 hereof, the court may issue a detention order directing that the  
77 child be taken into custody and be brought before the court.

78 I. A law-enforcement officer taking a child into custody pursuant to the provisions of § 16.1-246 G  
79 shall notify the intake officer of the juvenile court of the action taken. The intake officer shall determine  
80 if the child's conduct or situation is within the jurisdiction of the court and if a petition should be filed  
81 on behalf of the child. If the intake officer determines that a petition should not be filed, the  
82 law-enforcement officer shall as soon as practicable:

83 1. Return the child to his home;

84 2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco  
85 parentis;

86 3. Place the child in shelter care for a period not longer than twenty-four hours after the issuance of  
87 a detention order pursuant to § 16.1-255; or

88 4. Release the child.

89 During the period of detention authorized by this subsection no child shall be confined in any  
90 detention home, jail or other facility for the detention of adults.

91 J. If a child is taken into custody pursuant to the provisions of subsection B, F or G of § 16.1-246  
92 by a law-enforcement officer during such hours as the court is not in session and the child is not  
93 released or transferred to a facility or institution in accordance with subsection E, G, or I of this section,  
94 the child shall be held in custody only so long as is reasonably necessary to complete identification,  
95 investigation and processing. The child shall be held under visual supervision in a nonlocked,  
96 multipurpose area which is not designated for residential use. The child shall not be handcuffed or  
97 otherwise secured to a stationary object.

98 K. *Whenever a child, who is under the age of fifteen years old, is taken into custody pursuant to the*  
99 *provisions of subsection C, C1 or D of § 16.1-246 and such child is deprived, in any significant way of*  
100 *his freedom, the person taking the child into custody (i) shall advise the child of such deprivation of*  
101 *freedom, (ii) shall advise the child that he has the right to counsel and to have present his parent,*  
102 *guardian, legal custodian or other person standing in loco parentis, (iii) shall notify such counsel or*  
103 *parent, guardian, legal custodian or other person standing in loco parentis, and (iv) shall not*  
104 *interrogate the child regarding the commission or alleged commission of acts described in subsection C,*  
105 *C1 or D of § 16.1-246 until such parent, guardian, legal custodian or other person standing in loco*  
106 *parentis is present.*