

2002 SESSION

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HB601EH1

HOUSE BILL NO. 601

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice)

(Patron Prior to Substitute—Delegate Black)

House Amendments in [] — February 8, 2002

A BILL to amend and reenact § 16.1-241 of the Code of Virginia, relating to parental consent for abortion; penalty.

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-241 of the Code of Virginia is amended and reenacted 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.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by

ENGROSSED

HB601EH1

61 court order, either voluntarily or involuntarily, or any other person whose interest in the child derives
62 from or through such person whose parental rights have been so terminated, including, but not limited
63 to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child
64 subsequently has been legally adopted, except where a final order of adoption is entered pursuant to
65 § 63.1-219.48, or (ii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or
66 subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result
67 of such violation. The authority of the juvenile court to consider a petition involving the custody of a
68 child shall not be proscribed or limited where the child has previously been awarded to the custody of a
69 local board of social services.

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

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

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

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

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

89 1. Who has been abused or neglected;

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

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

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

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

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

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

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

115 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
116 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such
117 parental rights. No such petition shall be accepted, however, after the child has been placed in the home
118 of adoptive parents.

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

122 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 § 63.1-219.40. 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 consent~~ of an authorized person. After a hearing, a judge [~~may~~ *shall*] 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 consent~~ of 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~~ *consent*. 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~~ *consent* 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 consent~~ of an authorized person.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless ~~notice has been given~~ *consent has been obtained* or the minor delivers to the physician a court order entered pursuant to this section. However, neither ~~notice consent~~ 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 consent~~ 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. *Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement acknowledging a minor's intent to have an abortion is guilty of a Class 3 misdemeanor.*

"Consent" means that the physician has given notice of intent to perform the abortion and either (i) has received authorization to perform the abortion or (ii) at least one authorized person is present with the minor seeking the abortion. Written authorization shall be incorporated into the minor's medical

184 *record.*

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

192 "Authorization" means the minor has delivered to the physician a *notarized*, written statement signed
193 by an authorized person ~~and witnessed by a competent adult~~ that the authorized person knows of the
194 minor's intent to have an abortion.

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

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

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

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

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

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

211 [*If the amendments made by this act to § 16.1-241 are ever temporarily or permanently restrained*
212 *or enjoined by judicial order, § 16.1-241 shall be enforced as though the amendments were not adopted;*
213 *provided however, that if such temporary or permanent restraining order or injunction is ever stayed or*
214 *dissolved, or otherwise ceases to have effect, § 16.1-241, as amended, shall have full force and effect.]*