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## SENATE BILL NO. 537

Offered January 9, 2002

Prefiled January 9, 2002

*A BILL to amend and reenact § 16.1-266 of the Code of Virginia, relating to appointment of counsel in child dependency cases.*

Patrons—Mims; Delegates: Almand and Howell

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 16.1-266 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-266. Appointment of counsel.

A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition ~~terminating~~ *seeking termination of* residual parental rights or *who* is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 *or § 63.1-219.37*, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

B. Prior to the detention review hearing or the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services, in need of supervision or delinquent, such child and his ~~or her~~ parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § 16.1-267 and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or

2. If the court determines that the child is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159 and his ~~or her~~ parent, guardian, legal custodian or other person standing in loco parentis does not retain an attorney for the child, a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such child, and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to such waiver and that the interests of the child and the parent, guardian, legal custodian or other person standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance with law and shall be filed with the court records of the case.

C. ~~Prior to the hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian or other adult shall be informed by a judge, clerk or probation officer shall inform the parent or guardian of his right to counsel and prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in subdivision A. 2a. of § 16.1-241 and prior to a hearing at which a parent could be subjected to the loss of residual parental rights. In addition, prior to the hearing by the court of any case involving any other adult charged with abuse or neglect of a child, this adult shall be informed of his right to counsel . This adult and the parent or guardian shall be given an opportunity to:~~

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160. *If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held.*

*Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to § 16.1-281, a foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing pursuant to §16.1-282.1, the court shall consider appointing counsel to represent the child's parent or guardian.*

D. In all other cases which in the discretion of the court require counsel or a guardian ad litem to

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SB537

59 represent the interests of the child or children or the parent or guardian, a discreet and competent  
60 attorney-at-law may be appointed by the court. However, in cases where the custody of a child or  
61 children is the subject of controversy or requires determination and each of the parents or other persons  
62 claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian  
63 ad litem to represent the interests of the child or children unless the court finds, at any stage in the  
64 proceedings in a specific case, that the interests of the child or children are not otherwise adequately  
65 represented.

66 E. Any state or local agency, department, authority or institution and any school, hospital, physician  
67 or other health or mental health care provider shall permit a guardian ad litem appointed pursuant to this  
68 section to inspect and copy, without the consent of the child or his parents, any records relating to the  
69 child whom the guardian represents upon presentation by him of a copy of the court order appointing  
70 him or a court order specifically allowing him such access. Upon request therefor by the guardian ad  
71 litem made at least seventy-two hours in advance, a mental health care provider shall make himself  
72 available to conduct a review and interpretation of the child's treatment records which are specifically  
73 related to the investigation. Such a request may be made in lieu of or in addition to inspection and  
74 copying of the records.