

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 508

An Act to amend and reenact §§ 16.1-251 and 63.2-1517 of the Code of Virginia, relating to emergency removal of abused and neglected children.

[H 2188]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-251 and 63.2-1517 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-251. Emergency removal order.

A. A child may be taken into immediate custody and placed in shelter care pursuant to an emergency removal order in cases in which the child is alleged to have been abused or neglected. Such order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irreparable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition.

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

If the petitioner fails to obtain an emergency removal order within four hours of taking custody of the child, the affidavit or sworn testimony before the judge or intake officer shall state the reasons therefor.

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

B. Whenever a child is taken into immediate custody pursuant to an emergency removal order, a hearing shall be held in accordance with § 16.1-252 as soon as practicable, but in no event later than five business days after the removal of the child.

C. In the emergency removal order the court shall give consideration to temporary placement of the child with a relative or other interested individual, including grandparents, under the supervision of the local department of social services, until such time as the hearing in accordance with § 16.1-252 is held.

D. The local department of social services having legal custody of a child as defined in § 16.1-228 (i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

§ 63.2-1517. Authority to take child into custody.

A. A physician or child-protective services worker of a local department or law-enforcement official investigating a report or complaint of abuse and neglect may take a child into custody for up to ~~seventy-two~~ 72 hours without prior approval of parents or guardians provided:

1. The circumstances of the child are such that continuing in his place of residence or in the care or custody of the parent, guardian, custodian or other person responsible for the child's care, presents an imminent danger to the child's life or health to the extent that severe or irreparable injury would be likely to result or if evidence of abuse is perishable or subject to deterioration before a hearing can be held;

2. A court order is not immediately obtainable;

3. The court has set up procedures for placing such children;

4. Following taking the child into custody, the parents or guardians are notified as soon as practicable. ~~that he is in custody~~ *Every effort shall be made to provide such notice in person;*

5. A report is made to the local department; and

6. The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than ~~seventy-two~~ 72 hours, an emergency removal order pursuant to § 16.1-251; however, if a preliminary removal order is issued after a hearing held in accordance with § 16.1-252 within ~~seventy-two~~ 72 hours of the removal of the child, an emergency removal order shall not be necessary. *Any person or agency petitioning for an emergency removal order after four hours have elapsed following taking custody of the child shall state the reasons therefor pursuant to § 16.1-251.*

B. If the ~~seventy-two~~ 72-hour period for holding a child in custody and for obtaining a preliminary

or emergency removal order expires on a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed, the ~~seventy-two~~ 72 hours shall be extended to the next day that is not a Saturday, Sunday, or legal holiday or day on which the court is lawfully closed.