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HOUSE BILL NO. 1402

Offered January 8, 2003

Prefiled September 30, 2002

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

Patrons—Black, Abbitt, Armstrong, Athey, Bell, Bryant, Byron, Callahan, Carrico, Cline, Cole, Cosgrove, Cox, Devolites, Dudley, Gear, Hargrove, Hogan, Howell, Hugo, Ingram, Janis, Johnson, Jones, S.C., Kilgore, Landes, Lingamfelter, Louderback, Marrs, Marshall, D.W., Marshall, R.G., May, McDonnell, McDougle, McQuigg, Nixon, Nutter, O'Bannon, Oder, Orrock, Parrish, Putney, Rapp, Reese, Reid, Rollison, Rust, Saxman, Sears, Sherwood, Stump, Thomas, Ware, Weatherholtz, Welch and Wright; Senators: Bolling, Colgan, Cuccinelli, Hanger, Hawkins, Martin, Miller, K.G., Mims, Newman, Norment, O'Brien, Puckett, Rerras, Ruff, Stolle, Stosch, Trumbo, Wagner and Williams

Referred to Committee for Courts of Justice

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~~ 1 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~~ 1 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 § 63.2-903 or § 63.2-1817 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~~ 14 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~~ 14 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.

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

57 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
58 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
59 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
60 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
61 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party
62 with a legitimate interest shall not include any person (i) whose parental rights have been terminated by
63 court order, either voluntarily or involuntarily, or any other person whose interest in the child derives
64 from or through such person whose parental rights have been so terminated, including, but not limited
65 to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child
66 subsequently has been legally adopted, except where a final order of adoption is entered pursuant to
67 § 63.2-1241, or (ii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or
68 subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result
69 of such violation. The authority of the juvenile court to consider a petition involving the custody of a
70 child shall not be proscribed or limited where the child has previously been awarded to the custody of a
71 local board of social services.

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

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

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

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

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

91 1. Who has been abused or neglected;

92 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or § 63.2-1817
93 or is otherwise before the court pursuant to subdivision A 4 of this section; or

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

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

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

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

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

111 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
112 determining whether or not there is probable cause. Any objection based on jurisdiction under this
113 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
114 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it

shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily 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 19 (§ 63.2-1900 et seq.) of Title 63.2, 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 § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within ~~ten~~ 10 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~~ 4 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~~ 5 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~~ consent has been ~~given~~ 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 § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; 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.

176 For purposes of this subsection:

177 *"Authorization" means the minor has delivered to the physician a notarized, written statement signed*
178 *by an authorized person that the authorized person knows of the minor's intent to have an abortion.*

179 *"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or*
180 *(ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with*
181 *whom the minor regularly and customarily resides and who has care and control of the minor. Any*
182 *person who knows he is not an authorized person and who knowingly and willfully signs an*
183 *authorization statement acknowledging a minor's intent to have an abortion is guilty of a Class 3*
184 *misdemeanor.*

185 *"Consent" means that the physician has given notice of intent to perform the abortion and either (i)*
186 *has received authorization to perform the abortion or (ii) at least 1 authorized person is present with*
187 *the minor seeking the abortion. Written authorization shall be incorporated into the minor's medical*
188 *record.*

189 *"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual*
190 *notice of his intention to perform such abortion to an authorized person, either in person or by*
191 *telephone, at least ~~twenty-four~~24 hours previous to the performance of the abortion; or (ii) the physician*
192 *or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized*
193 *person by certified mail, addressed to such person at his usual place of abode, with return receipt*
194 *requested, at least ~~seventy-two~~72 hours prior to the performance of the abortion; or (iii) at least one*
195 *authorized person is present with the minor seeking the abortion; or (iv) the minor has delivered to the*
196 *physician a written statement signed by an authorized person and witnessed by a competent adult that*
197 *the authorized person knows of the minor's intent to have an abortion.*

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

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

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

207 *The ages specified in this law refer to the age of the child at the time of the acts complained of in*
208 *the petition.*

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

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

214 **2. That if the amendments made by this act to § 16.1-241 are ever temporarily or permanently**
215 **restrained or enjoined by judicial order, the provisions of § 16.1-241 shall be enforced as though**
216 **the amendments were not enacted; provided, however, that if such temporary or permanent**
217 **restraining order or injunction is ever stayed or dissolved, or otherwise ceases to have effect,**
218 **§ 16.1-241, as amended by this act, shall have full force and effect.**