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SENATE BILL NO. 103

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 21, 2004)

(Patron Prior to Substitute—Senator Devolites)

A BILL to amend and reenact §§ 16.1-69.48:5 and 16.1-296 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-296.2, relating to fees for custody and visitation proceedings.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.48:5 and 16.1-296 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 16.1-296.2 as follows:

§ 16.1-69.48:5. Fees for services of juvenile and domestic relations district court judges and clerks in certain civil cases.

Except as otherwise provided, upon the initial commencement of any case in the juvenile and domestic relations district court pursuant to subdivision A 3 of § 16.1-241 when the custody or visitation of a child is a subject of controversy or requires determination, there shall be a filing fee of \$25. *However, only one \$25 fee shall be required for all custody and visitation petitions simultaneously initiated by a single petitioner. Notwithstanding any other provision of law, there shall be no other fees or costs added to this fee as a condition of filing.* No case to which this fee is applicable shall be set for hearing by the clerk until this fee has been paid except on account of poverty as provided in § 17.1-606. Fees shall be paid to the clerk in the jurisdiction in which the petition is filed.

This fee shall not be charged in any case brought by an agent of the Commonwealth or of a local government entity.

When service of process is had on the respondent named in a petition for which the filing fee established by this section has been paid, such petition may be reissued once by changing the return day of such process, for which service there shall be no charge; however, reissuance of such process shall be within three months after the original return day.

§ 16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within thirty days from entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or § 16.1-273.

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an

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60 appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal
61 is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in
62 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

63 F. In all other cases on appeal, proceedings in the circuit court shall conform to the equity practice
64 where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion
65 of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to
66 § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the
67 circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

68 G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee
69 could have been assessed in the juvenile and domestic relations court and shall be collected in the
70 circuit court, *except that the appeal to circuit court of any case in which a fee either was or could have*
71 *been assessed pursuant to § 16.1-69.48:5 shall also be in accordance with § 16.1-296.2.*

72 H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic
73 relations district court except for that portion of any order or judgment establishing a support arrearage
74 or suspending payment of support during pendency of an appeal. In cases involving support, no appeal
75 shall be allowed until the party applying for the same or someone for him gives bond, in an amount and
76 with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment
77 as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment
78 of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a
79 finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations
80 district court may require the party applying for the appeal or someone for him to give bond, with or
81 without surety, to insure his appearance and may also require bond in an amount and with sufficient
82 surety to secure the payment of prospective support accruing during the pendency of the appeal. An
83 appeal will not be perfected unless such appeal bond as may be required is filed within thirty days from
84 the entry of the final judgment or order. However, no appeal bond shall be required of the
85 Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or
86 an insane person, or the interest of a county, city or town.

87 If bond is furnished by or on behalf of any party against whom judgment has been rendered for
88 money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as
89 may be entered against the party on appeal, and for the payment of all damages which may be awarded
90 against him in the appellate court. If the appeal is by a party against whom there is no recovery, the
91 bond shall be conditioned for the payment of any damages as may be awarded against him on the
92 appeal.

93 This subsection shall not apply to release on bail pursuant to other subsections of this section or
94 § 16.1-298.

95 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
96 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
97 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
98 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
99 (§ 16.1-266 et seq.) of this chapter.

100 J. In any case which has been referred or transferred from a circuit court to a juvenile court and an
101 appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit
102 court in the same locality as the juvenile court to which the case had been referred or transferred.

103 § 16.1-296.2. *Appeals of certain custody and visitation proceedings.*

104 A. *In any matter in which a filing fee either was or could have been assessed pursuant to*
105 *§ 16.1-69.48:5, no appeal shall be allowed unless and until the party applying for appeal shall, within*
106 *10 days from the entry of the final judgment or order, either (i) pay to the clerk of the court from which*
107 *the appeal is taken the amount of the writ tax of the court to which the appeal is taken and all other*
108 *applicable costs or (ii) file with the clerk of the court from which the appeal is taken a petition to have*
109 *the court to which the appeal is taken determine that the writ tax and costs need not be paid on account*
110 *of poverty as provided in § 17.1-606. The judge or clerk of any court from which the appeal is taken*
111 *shall promptly transmit to the clerk of the appellate court the original pleadings, together with all*
112 *exhibits and other papers filed in the trial of the case, and either (i) the writ tax and costs paid or (ii) a*
113 *petition filed to have the court to which the appeal is taken determine that the writ tax and costs need*
114 *not be paid on account of poverty as provided in § 17.1-606. Upon receipt of the foregoing by the clerk*
115 *of the appellate court, the case shall then be docketed.*

116 B. *Notwithstanding any other provision of law, the writ tax of the court to which the appeal is taken*
117 *and other applicable costs shall be assessed only once for all custody and visitation petitions*
118 *simultaneously appealed by a single appellant.*