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## SENATE BILL NO. 335

## FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Stolle  
on February 10, 2004)

(Patron Prior to Substitute—Senator Stolle)

*A BILL to amend and reenact §§ 8.01-293, 16.1-241, 16.1-264 and 17.1-272 of the Code of Virginia, relating to service of process on teacher or other school personnel; restrictions; fees.*

**Be it enacted by the General Assembly of Virginia:****1. That §§ 8.01-293, 16.1-241, 16.1-264 and 17.1-272 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-293. Authorization to serve process, capias or criminal show cause order; execute writ of possession and levy upon property.

A. The following persons are authorized to serve process:

1. The sheriff within such territorial bounds as described in § 8.01-295; or

2. Any person of age ~~eighteen~~ 18 years or older and who is not a party or otherwise interested in the subject matter in controversy. *However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy.*

Whenever in this Code the term "officer" or "sheriff" is used to refer to persons authorized to make, return or do any other act relating to service of process, such term shall be deemed to refer to any person authorized by this section to serve process.

B. Notwithstanding any other provision of law (i) only a sheriff or high constable may execute an order or writ of possession for personal, real or mixed property, including an order or writ of possession arising out of an action in unlawful entry and detainer or ejectment; (ii) any sheriff, high constable or law-enforcement officer as defined in § 9.1-101 of the Code of Virginia may serve any capias or criminal show cause order; and (iii) only a sheriff, the high constable for the City of Norfolk or Virginia Beach or a treasurer may levy upon property.

§ 16.1-241. Jurisdiction; consent for abortion.

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 § 63.2-903 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 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

60 § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given  
61 notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited  
62 to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile  
63 committed the act alleged and that the juvenile was 14 years of age or older at the time of the  
64 commission of the alleged offense, and any matters related thereto. A determination by the juvenile  
65 court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge  
66 to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge.  
67 In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile  
68 court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as  
69 provided in § 16.1-269.6.

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

74 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,  
75 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,  
76 father or legal guardian but shall include petitions filed at any time by any party with a legitimate  
77 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not  
78 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party  
79 with a legitimate interest shall not include any person (i) whose parental rights have been terminated by  
80 court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a  
81 person whose parental rights have been terminated by court order, either voluntarily or involuntarily,  
82 including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family  
83 members, if the child subsequently has been legally adopted, except where a final order of adoption is  
84 entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of  
85 § 18.2-61, § 18.2-63 or subsection B of § 18.2-366 when the child who is the subject of the petition was  
86 conceived as a result of such violation. The authority of the juvenile court to consider a petition  
87 involving the custody of a child shall not be proscribed or limited where the child has previously been  
88 awarded to the custody of a local board of social services.

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

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

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

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

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

108 1. Who has been abused or neglected;

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

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

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

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

121 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or

neglect of children or with any violation of law that causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

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

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, 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 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 seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (i) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

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.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other

183 pending matters so that the court may reach a decision promptly and without delay in order to serve the  
184 best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon  
185 as practicable but in no event later than four days after the petition is filed.

186 An expedited confidential appeal to the circuit court shall be available to any minor for whom the  
187 court denies an order authorizing an abortion without consent or without notice. Any such appeal shall  
188 be heard and decided no later than five days after the appeal is filed. The time periods required by this  
189 subsection shall be subject to § 1-13.3:1. An order authorizing an abortion without consent or without  
190 notice shall not be subject to appeal.

191 No filing fees shall be required of the minor at trial or upon appeal.

192 If either the original court or the circuit court fails to act within the time periods required by this  
193 subsection, the court before which the proceeding is pending shall immediately authorize a physician to  
194 perform the abortion without consent of or notice to an authorized person.

195 Nothing contained in this subsection shall be construed to authorize a physician to perform an  
196 abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult  
197 woman.

198 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent  
199 has been obtained or the minor delivers to the physician a court order entered pursuant to this section  
200 and the physician or his agent provides such notice as such order may require. However, neither consent  
201 nor judicial authorization nor notice shall be required if the minor declares that she is abused or  
202 neglected and the attending physician has reason to suspect that the minor may be an abused or  
203 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with  
204 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the  
205 facts justifying the exception in the minor's medical record.

206 For purposes of this subsection:

207 "Authorization" means the minor has delivered to the physician a notarized, written statement signed  
208 by an authorized person that the authorized person knows of the minor's intent to have an abortion and  
209 consents to such abortion being performed on the minor.

210 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or  
211 (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with  
212 whom the minor regularly and customarily resides and who has care and control of the minor. Any  
213 person who knows he is not an authorized person and who knowingly and willfully signs an  
214 authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

215 "Consent" means that (i) the physician has given notice of intent to perform the abortion and has  
216 received authorization from an authorized person, or (ii) at least one authorized person is present with  
217 the minor seeking the abortion and provides written authorization to the physician, which shall be  
218 witnessed by the physician or an agent thereof. In either case, the written authorization shall be  
219 incorporated into the minor's medical record and maintained as a part thereof.

220 "Medical emergency" means any condition which, on the basis of the physician's good faith clinical  
221 judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate  
222 abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial  
223 and irreversible impairment of a major bodily function.

224 "Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual  
225 notice of his intention to perform such abortion to an authorized person, either in person or by  
226 telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his  
227 agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person  
228 by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at  
229 least 72 hours prior to the performance of the abortion.

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

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

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

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

241 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of  
242 any process in a proceeding pursuant to subdivision 3 of subsection A, *except as provided in subsection*  
243 *A9 of § 17.1-272*, or subsection B, D, M or R of this section.

244 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of

subsection V shall be guilty of a Class 3 misdemeanor.

§ 16.1-264. Service of summons; proof of service; penalty.

A. If a party designated in § 16.1-263 A to be served with a summons can be found within the Commonwealth, the summons shall be served upon him in person or by substituted service as prescribed in § 8.01-296 (2).

If a party designated to be served in § 16.1-263 is without the Commonwealth but can be found or his address is known, or can with reasonable diligence be ascertained, service of summons may be made either by delivering a copy thereof to him personally or by mailing a copy thereof to him by certified mail return receipt requested.

If after reasonable effort a party other than the person who is the subject of the petition cannot be found or his post-office address cannot be ascertained, whether he is within or without the Commonwealth, the court may order service of the summons upon him by publication in accordance with the provisions of §§ 8.01-316 and 8.01-317.

B. Service of summons may be made under the direction of the court by sheriffs, their deputies and police officers in counties and cities or by any other suitable person designated by the court. *However, in any case in which custody or visitation of a minor child or children is at issue and a summons is issued for the attendance and testimony of a teacher or other school personnel who is not a party to the proceeding, if such summons is served on school property, it shall be served only by a sheriff or his deputy.*

C. Proof of service may be made by the affidavit of the person other than an officer designated in subsection B hereof who delivers a copy of the summons to the person summoned, but if served by a state, county or municipal officer his return shall be sufficient without oath.

D. The summons shall be considered a mandate of the court and willful failure to obey its requirements shall subject any person guilty thereof to liability for punishment as for contempt.

§ 17.1-272. Process and service fees generally.

A. The fee for process and service in the following instances shall be ~~twelve dollars~~ \$12:

1. Service on any person, firm or corporation, a declaration in ejectment, order, notice, summons or any other civil process, except as herein otherwise provided, and for service on any person, firm, or corporation any process when the body is not taken and making a return thereof, except that no fee shall be charged for service pursuant to § 2.2-4022.

2. Summoning a witness or garnishee on an attachment.

3. Service on any person of an attachment or other process under which the body is taken and making a return thereon.

4. Service of any order of court not otherwise provided for, except that no fees shall be charged for protective orders issued pursuant to Chapter 11 (§ 16.1-226 et seq.) of Title 16.1.

5. Service of a writ of possession.

6. Levying an execution or distress warrant or an attachment.

7. Making a return of a writ of fieri facias where no levy is made or forthcoming bond is taken.

8. Levying upon current money, bank notes, goods or chattels of a judgment debtor pursuant to § 8.01-478.

9. *Summoning a witness in any case in which custody or visitation of a minor child or children is at issue.*

B. The process and service fee for serving any papers returnable out of state shall be ~~fifty dollars~~ \$50, except no fees shall be charged for the service of papers in connection with the prosecution of any misdemeanor or felony domestic violence offense, or in connection with the filing, issuance, registration, or service of a protection order or a petition for protection order, to protect a victim of domestic violence, stalking or sexual assault. A victim of domestic violence, stalking or sexual assault shall not bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, issued inside or outside the Commonwealth.

C. The fees set out in this section shall be allowable for services provided by such officers in the circuit and district courts.