

054281404

**HOUSE BILL NO. 2670**

Offered January 12, 2005

Prefiled January 12, 2005

*A BILL to amend and reenact § 16.1-266 of the Code of Virginia as it shall become effective, relating to juveniles; representation by attorney.*

\_\_\_\_\_  
Patron—McDonnell

\_\_\_\_\_  
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 as it shall become effective is amended and reenacted as follows:**

§ 16.1-266. (Effective July 1, 2005) Appointment of counsel and guardian ad litem.

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 seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or § 63.2-1230, 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 hearing held pursuant to § 16.1-250, the court shall appoint a qualified and competent attorney-at-law to represent the child unless an attorney has been retained and appears on behalf of the child. For the purposes of appointment of counsel for the detention hearing held pursuant to § 16.1-250 only, a child's indigence shall be presumed. Nothing in this subsection shall prohibit a judge from releasing a child from detention prior to appointment of counsel.

C. Subsequent to the detention hearing, if any, and prior to 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 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. Request that the court appoint counsel, provided that before counsel is appointed or the court continues any appointment previously made pursuant to subsection B, the court shall determine that the child is indigent within the contemplation of the law pursuant to guidelines set forth in § 19.2-159 by requiring the child's parent, guardian, legal custodian or other person standing in loco parentis to complete a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement, and upon determination of indigence the court shall appoint an attorney from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to represent the child; 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, and such waiver is consistent with the interests of the child. Such written waiver shall be in accordance with law and shall be filed with the court records of the case. ~~A child who is alleged to have committed an offense that may result in commitment pursuant to subsection 14 of § 16.1-278.8, may waive such right only after he consults with an attorney and the court determines that his waiver is free and voluntary. The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case. The juvenile or his parent, guardian, legal custodian or other person standing in loco parentis shall not be permitted to waive representation by an attorney under this subdivision if conviction of the charged offense could result in commitment to the Department of Juvenile Justice.~~

D. A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel 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

INTRODUCED

HB2670

59 adult and the court shall appoint an attorney-at-law to represent him; or

60 3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

61 If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or  
62 guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests  
63 of the absent parent or guardian, and the hearing may be held.

64 Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to  
65 § 16.1-281, a foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing  
66 pursuant to § 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or  
67 guardian.

68 E. In those cases described in subsections A, B, C and D, which in the discretion of the court require  
69 counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult  
70 party in addition to the representation provided in those subsections, a discreet and competent  
71 attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

72 F. In all other cases which in the discretion of the court require counsel or a guardian ad litem, or  
73 both, to represent the child or children or the parent or guardian, discreet and competent attorneys-at-law  
74 may be appointed by the court. However, in cases where the custody of a child or children is the subject  
75 of controversy or requires determination and each of the parents or other persons claiming a right to  
76 custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent  
77 the interests of the child or children unless the court finds, at any stage in the proceedings in a specific  
78 case, that the interests of the child or children are not otherwise adequately represented.

79 G. Any state or local agency, department, authority or institution and any school, hospital, physician  
80 or other health or mental health care provider shall permit a guardian ad litem or counsel for the child  
81 appointed pursuant to this section to inspect and copy, without the consent of the child or his parents,  
82 any records relating to the child whom the guardian or counsel represents upon presentation by him of a  
83 copy of the court order appointing him or a court order specifically allowing him such access. Upon  
84 request therefor by the guardian ad litem or counsel for the child made at least 72 hours in advance, a  
85 mental health care provider shall make himself available to conduct a review and interpretation of the  
86 child's treatment records which are specifically related to the investigation. Such a request may be made  
87 in lieu of or in addition to inspection and copying of the records.