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HOUSE BILL NO. 126

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 6, 2006)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact § 16.1-250 of the Code of Virginia, relating to juvenile detention hearings.

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-250 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-250. Procedure for detention hearing.

A. When a child has been taken into immediate custody and not released as provided in § 16.1-247 or § 16.1-248.1, such child shall appear before a judge on the next day on which the court sits within the county or city wherein the charge against the child is pending. In the event the court does not sit within the county or city on the following day, such child shall appear before a judge within a reasonable time, not to exceed 72 hours, after he has been taken into custody. If the 72-hour period expires on a Saturday, Sunday or other legal holiday, the 72 hours shall be extended to the next day which is not a Saturday, Sunday or legal holiday. In the event the court does not sit on the following day within the county or city wherein the charge against the child is pending, the court may conduct the hearing in another county or city, but only if two-way electronic video and audio communication is available in the courthouse of the county or city wherein the charge is pending.

B. The appearance of the child, the attorney for the Commonwealth, the attorney for the child and the parent, guardian, legal custodian or other person standing in loco parentis may be by (i) personal appearance before the judge or (ii) use of two-way electronic video and audio communication. If two-way electronic video and audio communication is used, a judge may exercise all powers conferred by law and all communications and proceedings shall be conducted in the same manner as if the appearance were in person, and any documents filed may be transmitted by electronically transmitted facsimile process. The facsimile may be served or executed by the officer or person to whom sent, and returned in the same manner, and with the same force, effect, authority, and liability as an original document. All signatures thereon shall be treated as original signatures. Any two-way electronic video and audio communication system used for an appearance shall meet the standards as set forth in subsection B of § 19.2-3.1.

C. Notice of the detention hearing or any rehearing, either oral or written, stating the time, place and purpose of the hearing shall be given to the parent, guardian, legal custodian or other person standing in loco parentis if he can be found, to the child's attorney, to the child if 12 years of age or older and to the attorney for the Commonwealth.

D. During the detention hearing, the parties shall be informed of the child's right to remain silent with respect to any allegation of delinquency and of the contents of the petition. The attorney for the child and the attorney for the Commonwealth shall be given the opportunity to be heard.

E. If the judge finds that there is not probable cause to believe that the child committed the delinquent act alleged, the court shall order his release. If the judge finds that there is probable cause to believe that the child committed the delinquent act alleged but that the full-time detention of a child who is alleged to be delinquent is not required, the court shall order his release, and in so doing, the court may impose one or more of the following conditions singly or in combination:

1. Place the child in the custody of a parent, guardian, legal custodian or other person standing in loco parentis under their supervision, or under the supervision of an organization or individual agreeing to supervise him;

2. Place restrictions on the child's travel, association or place of abode during the period of his release;

3. Impose any other condition deemed reasonably necessary and consistent with the criteria for detaining children specified in § 16.1-248.1; or

4. Release the child on bail or recognizance in accordance with the provisions of Chapter 9 (§ 19.2-119 et seq.) of Title 19.2.

F. An order releasing a child on any of the conditions specified in this section may, at any time, be amended to impose additional or different conditions of release or to return the child who is alleged to be delinquent to custody for failure to conform to the conditions previously imposed.

G. All relevant and material evidence helpful in determining probable cause under this section or the need for detention may be admitted by the court even though not competent in a hearing on the petition.

H. If the child is not released and a parent, guardian, legal custodian or other person standing in loco parentis is not notified and does not appear or does not waive appearance at the hearing, upon the

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60 written request of such person stating that such person is willing and available to supervise the child
61 upon release from detention and to return the child to court for all scheduled proceedings on the
62 pending charges, the court shall rehear the matter on the next day on which the court sits within the
63 county or city wherein the charge against the child is pending. If the court does not sit within the
64 county or city on the following day, such hearing shall be held before a judge within a reasonable time,
65 not to exceed 72 hours, after the request.

66 I. In considering probable cause under this section, if the court deems it necessary to summon
67 witnesses to assist in such determination then the hearing may be continued and the child remain in
68 detention, but in no event longer than three consecutive days, exclusive of Saturdays, Sundays, and legal
69 holidays.