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HOUSE BILL NO. 712

Offered January 11, 2006

Prefiled January 10, 2006

A BILL to amend and reenact § 16.1-247 of the Code of Virginia, relating to the duties of a person taking a child into custody for interrogation.

 Patron—McQuigg

 Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-247 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-247. Duties of person taking child into custody.

A. A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto, bring the child to the judge or intake officer of the court and the judge, intake officer or arresting officer shall, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

B. A person taking a child into custody pursuant to the provisions of subsection B, C or D of § 16.1-246, during such hours as the court is open, shall, with all practicable speed, and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to such child's parents, guardian, custodian or other suitable person able and willing to provide supervision and care for such child and issue oral counsel and warning as may be appropriate; or

2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco parentis upon their promise to bring the child before the court when requested; or

3. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis. Nothing herein shall prevent the child from being held for the purpose of administering a blood or breath test to determine the alcoholic content of his blood where the child has been taken into custody pursuant to § 18.2-266.

C. A person taking a child into custody pursuant to the provisions of subsections E and F of § 16.1-246, during such hours as the court is open, shall, with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child to the institution, facility or home from which he ran away or escaped; or

2. If not released, bring the child to the judge or intake officer of the court and, in the most expeditious manner practicable, give notice of the action taken, together with a statement of the reasons for taking the child into custody, in writing to the judge or intake officer, and the judge, intake officer or arresting officer shall give notice of the action taken orally or in writing to the institution, facility or home in which the child had been placed and orally or in writing to the child's parent, guardian, legal custodian or other person standing in loco parentis.

D. A person taking a child into custody pursuant to the provisions of subsection A of § 16.1-246, during such hours as the court is not open, shall with all practicable speed and in accordance with the provisions of this law and the orders of court pursuant thereto:

1. Release the child taken into custody pursuant to a warrant on bail or recognizance pursuant to Chapter 9 (§ 19.2-119 et seq.) of Title 19.2; or

2. Place the child in a detention home or in shelter care; or

3. Place the child in a jail subject to the provisions of § 16.1-249.

E. A person taking a child into custody pursuant to the provisions of subsection B, C or D of § 16.1-246 during such hours as the court is not open, shall:

1. Release the child pursuant to the provisions of subdivision B 1 or B 2 of this section; or

2. Release the child on bail or recognizance pursuant to Chapter 9 of Title 19.2; or

3. Place the child taken into custody pursuant to subsection B of § 16.1-246 in shelter care after the issuance of a detention order pursuant to § 16.1-255; or

4. Place the child taken into custody pursuant to subsection C or D of § 16.1-246 in shelter care or

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HB712

59 in a detention home after the issuance of a warrant by a magistrate; or

60 5. Place the child in a jail subject to the provisions of § 16.1-249 after the issuance of a warrant by a
61 magistrate or after the issuance of a detention order pursuant to § 16.1-255; or

62 6. In addition to any other provisions of this subsection, detain the child for a reasonably necessary
63 period of time in order to administer a breath or blood test to determine the alcohol content of his
64 blood, if such child was taken into custody pursuant to § 18.2-266.

65 F. A person taking a child into custody pursuant to the provisions of subsection E of § 16.1-246,
66 during such hours as the court is not open, shall:

67 1. Release the child to the institution or facility from which he ran away or escaped; or

68 2. Detain the child in a detention home or in a jail subject to the provisions of § 16.1-249 after the
69 issuance of a warrant by a magistrate or after the issuance of a detention order pursuant to § 16.1-255.

70 G. A person taking a child into custody pursuant to the provisions of subsection F of § 16.1-246,
71 during such hours as the court is not open, shall:

72 1. Release the child to the facility or home from which he ran away; or

73 2. Detain the child in shelter care after the issuance of a detention order pursuant to § 16.1-255 or
74 after the issuance of a warrant by a magistrate.

75 H. If a parent, guardian or other custodian fails, when requested, to bring the child before the court
76 as provided in subdivisions B 2 and E 1 hereof, the court may issue a detention order directing that the
77 child be taken into custody and be brought before the court.

78 I. A law-enforcement officer taking a child into custody pursuant to the provisions of subsection G
79 of § 16.1-246 shall notify the intake officer of the juvenile court of the action taken. The intake officer
80 shall determine if the child's conduct or situation is within the jurisdiction of the court and if a petition
81 should be filed on behalf of the child. If the intake officer determines that a petition should not be filed,
82 the law-enforcement officer shall as soon as practicable:

83 1. Return the child to his home;

84 2. Release the child to such child's parents, guardian, legal custodian or other person standing in loco
85 parentis;

86 3. Place the child in shelter care for a period not longer than 24 hours after the issuance of a
87 detention order pursuant to § 16.1-255; or

88 4. Release the child.

89 During the period of detention authorized by this subsection no child shall be confined in any
90 detention home, jail or other facility for the detention of adults.

91 J. If a child is taken into custody pursuant to the provisions of subsection B, F or G of § 16.1-246
92 by a law-enforcement officer during such hours as the court is not in session and the child is not
93 released or transferred to a facility or institution in accordance with subsection E, G, or I of this section,
94 the child shall be held in custody only so long as is reasonably necessary to complete identification,
95 investigation and processing. The child shall be held under visual supervision in a nonlocked,
96 multipurpose area which is not designated for residential use. The child shall not be handcuffed or
97 otherwise secured to a stationary object.

98 K. *Whenever a child who is under the age of 14 years is taken into custody pursuant to the*
99 *provisions of subsection C, C1, or D of § 16.1-246, the person taking the child into custody shall*
100 *proceed in accordance with subdivisions B 1 and B 2 hereof if the child is at liberty to leave. If the*
101 *child is not at liberty to leave, the person taking him into custody shall advise the child that (i) he is*
102 *not at liberty to leave, (ii) he has the right to counsel, and (iii) he has the right to have his parent*
103 *present. The person taking the child into custody shall notify such counsel or parent if the child*
104 *indicates he wants either or both of them present, provide either or both of them the opportunity to be*
105 *present during the detention of the child, and shall not interrogate the child regarding the subject of his*
106 *detention unless (a) the child's attorney or parent or both are in attendance or (b) the child has*
107 *indicated he wants neither of them present. The person taking the child into custody shall make a*
108 *reasonable effort to notify the parent unless the identity and location of such person is not reasonably*
109 *ascertainable and the same is certified in an affidavit by the person taking the child into custody.*

110 *For the purposes of this subsection, "parent" means either or both parents, guardian, legal*
111 *custodian, or other person standing in loco parentis. A parent hereunder shall have no right to notice*
112 *or attendance during the detention of the child if he is a suspect in the same criminal offense for which*
113 *the child is in custody.*