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HOUSE BILL NO. 726

Offered January 11, 2006

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A BILL to amend and reenact §§ 16.1-241, 63.2-1202 and 63.2-1222 of the Code of Virginia, relating to parental consent prior to adoption.

Patron—McQuigg

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 63.2-1202 and 63.2-1222 of the Code of Virginia are amended and reenacted as follows:

§ 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 § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, 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. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

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

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,

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59 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
60 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
61 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
62 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party
63 with a legitimate interest shall not include any person (i) whose parental rights have been terminated by
64 court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a
65 person whose parental rights have been terminated by court order, either voluntarily or involuntarily,
66 including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family
67 members, if the child subsequently has been legally adopted, except where a final order of adoption is
68 entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of
69 § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United
70 States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a
71 result of such violation. The authority of the juvenile court to consider a petition involving the custody
72 of a child shall not be proscribed or limited where the child has previously been awarded to the custody
73 of a local board of social services.

74 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
75 provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the involuntary admission of a person
76 with mental illness or judicial certification of eligibility for admission to a training center for persons
77 with mental retardation in accordance with the provisions of Chapters 1 (§ 37.2-100 et seq.) and 8
78 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of the involuntary admission and certification of adults
79 shall be concurrent with the general district court.

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

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

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

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

93 1. Who has been abused or neglected;

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

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

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

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

106 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or
107 neglect of children or with any violation of law that causes or tends to cause a child to come within the
108 purview of this law, or with any other offense against the person of a child. In prosecution for felonies
109 over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is
110 probable cause.

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

113 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
114 determining whether or not there is probable cause. Any objection based on jurisdiction under this
115 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
116 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it
117 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for
118 challenging directly or collaterally the jurisdiction of the court in which the case is tried.

119 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
120 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. (Effective October 1, 2005) 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 pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent or without notice shall not be subject to appeal.

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

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

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

182 woman.

183 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent
184 has been obtained or the minor delivers to the physician a court order entered pursuant to this section
185 and the physician or his agent provides such notice as such order may require. However, neither consent
186 nor judicial authorization nor notice shall be required if the minor declares that she is abused or
187 neglected and the attending physician has reason to suspect that the minor may be an abused or
188 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with
189 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the
190 facts justifying the exception in the minor's medical record.

191 For purposes of this subsection:

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

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

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

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

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

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

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

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

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

226 *X. Petitions filed by birth mothers 14 years of age or younger seeking judicial authorization of an*
227 *adoption petition pursuant to § 63.2-1202 or to enter an entrustment agreement pursuant to § 63.2-1222,*
228 *in lieu of parental consent.*

229 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of
230 any process in a proceeding pursuant to subdivision 3 of subsection A, except as provided in subdivision
231 A 6 of § 17.1-272, or subsection B, D, M or R of this section.

232 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of
233 subsection V shall be guilty of a Class 3 misdemeanor.

234 § 63.2-1202. Parental, or agency, consent required; exceptions.

235 A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless
236 written consent to the proposed adoption is filed with the petition. Such consent shall be signed and
237 acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth
238 parent for the adoption of his child placed directly by the birth parent shall be executed as provided in
239 § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to
240 § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences
241 compliance with the applicable notice and consent requirements of § 63.2-1233.

242 B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to
243 adoption and *perform all acts related to adoption, and* shall be as fully bound thereby as if the birth

parent had attained the age of 18 years. *Any birth parent 14 years of age or younger shall be required to obtain parental consent to the adoption or petition the court for judicial authorization as provided under §16.1-241.*

C. Consent shall be executed:

1. By the parents or surviving parent of a child born in wedlock. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man, or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in such case his consent shall not be required. If the parents are divorced and the residual parental rights and responsibilities as defined in § 16.1-228 of one parent have been terminated by terms of the divorce, or other order of a court having jurisdiction, the petition may be granted without the consent of such parent; or

2. By the parents or surviving parent of a child born to parents who were not married to each other at the time of the child's conception or birth. The consent of the birth father of a child born to parents who were not married to each other at the time of the child's conception or birth shall not be required (i) if the identity of the birth father is not reasonably ascertainable or (ii) if the identity of such birth father is ascertainable and his whereabouts are known, such birth father is given notice of the adoption proceeding, including the date and location of the hearing, by registered or certified mail to his last known address, and such birth father fails to object to the adoption proceeding within 21 days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the circuit court in which the petition was filed during the business day of the court, within the time period specified in this section. Failure of the objecting party to appear at the consent hearing, either in person or by counsel, shall constitute a waiver of such objection; or

3. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903 or 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

4. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

D. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

E. When a child has been placed by the birth parent(s) with the prospective adoptive parent(s) who is the child's grandparent, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt, the circuit court may accept the written and signed consent of the birth parent(s) that has been acknowledged by an officer authorized by law to take such acknowledgments.

§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished; requirement for agencies outside the Commonwealth.

For the purposes of this section, a birth parent who is less than 18 years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, *and perform all acts related to adoption* and shall be as fully bound thereby as if such birth parent had attained the age of 18 years. *Any birth parent 14 years of age or younger shall be required to obtain parental consent to enter into an entrustment agreement or petition the court for judicial authorization as provided under § 16.1-241.*

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable, or if such birth father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within 21 days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

305 An entrustment agreement for the termination of all parental rights and responsibilities with respect
306 to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the
307 birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of
308 § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and
309 the child was conceived as a result of such violation.

310 A copy of the entrustment agreement shall be furnished to all parties signing such agreement.

311 When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly
312 authorized to place children for adoption by virtue of the laws under which it operates executes an
313 entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights
314 and responsibilities with respect to the child, the requirements of §§ 63.2-1221 through 63.2-1224 shall
315 apply. Any entrustment agreement that fails to comply with such requirements shall be void.