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HOUSE BILL NO. 2073

Offered January 10, 2007

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A BILL to amend and reenact §§ 16.1-109 and 16.1-296 of the Code of Virginia, relating to appeal bonds in cases from district and juvenile courts.

Patron—Armstrong

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-109 and 16.1-296 of the Code of Virginia are amended and reenacted as follows:**

§ 16.1-109. Appellate court may require new or additional security.

A. The court to which the appeal is taken may on motion for good cause shown, after reasonable notice to the appellant, require the appellant to give new or additional security, and if such security be not given within the time prescribed by the appellate court the appeal shall be dismissed with costs, and the judgment or order of the court from which the appeal was taken shall remain in effect and the appellate court shall award execution thereon, with costs, against the appellant and his surety.

B. When a bond is required by law to be posted in connection with an appeal or removal from district court, and there is a defect, irregularity, or omission in the bond or the district court erroneously failed to require the posting of a bond, the circuit court shall order the appellant to cure such defect, irregularity, or omission or to post a bond within the time prescribed by the circuit court. The failure to comply with such order shall result in the withdrawal of the appeal and the reinstatement of any district court order retroactive to its status at the time such appeal was noted or such removal was ordered. Upon the withdrawal of the appeal, the circuit court clerk shall tax the costs notwithstanding any other provision of law.

§ 16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within 10 days from the entry of a final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within 30 days from entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of 12 persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or 16.1-273.

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

C2. Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8 and the juvenile is in a secure facility pending the appeal, the circuit court, when practicable, shall hold a hearing on the merits of the case within 45 days of the filing of the appeal. Upon receipt of the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order and a copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt of notice of an appeal. The time limitations shall be tolled during any period in which the juvenile has escaped from custody. A juvenile held continuously in secure detention shall be released

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59 from confinement if there is no hearing on the merits of his case within 45 days of the filing of the
60 appeal. The circuit court may extend the time limitations for a reasonable period of time based upon
61 good cause shown, provided the basis for such extension is recorded in writing and filed among the
62 papers of the proceedings.

63 D. When an appeal is taken in a case involving termination of parental rights brought under
64 § 16.1-283, the circuit court shall hold a hearing on the merits of the case within 90 days of the
65 perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the
66 docket of the Court.

67 E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction
68 of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an
69 appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal
70 is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in
71 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

72 F. In all other cases on appeal, proceedings in the circuit court shall be heard without a jury;
73 however, hearing of an issue by an advisory jury may be allowed, in the discretion of the judge, upon
74 the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be
75 given precedence on the docket of the court over other civil appeals taken to the circuit court from the
76 district courts, but shall otherwise be docketed and processed as other civil cases.

77 G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee
78 could have been assessed in the juvenile and domestic relations court and shall be collected in the
79 circuit court, except that the appeal to circuit court of any case in which a fee either was or could have
80 been assessed pursuant to § 16.1-69.48:5 shall also be in accordance with § 16.1-296.2.

81 H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic
82 relations district court except for that portion of any order or judgment establishing a support arrearage
83 or suspending payment of support during pendency of an appeal. In cases involving support, no appeal
84 shall be allowed until the party applying for the same or someone for him gives bond, in an amount and
85 with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment
86 as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment
87 of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a
88 finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations
89 district court may require the party applying for the appeal or someone for him to give bond, with or
90 without surety, to insure his appearance and may also require bond in an amount and with sufficient
91 surety to secure the payment of prospective support accruing during the pendency of the appeal. An
92 appeal will not be perfected unless such appeal bond as may be required is filed within 30 days from
93 the entry of the final judgment or order. However, no appeal bond shall be required of the
94 Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or
95 an insane person, or the interest of a county, city or town.

96 If bond is furnished by or on behalf of any party against whom judgment has been rendered for
97 money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as
98 may be entered against the party on appeal, and for the payment of all damages which may be awarded
99 against him in the appellate court. If the appeal is by a party against whom there is no recovery, the
100 bond shall be conditioned for the payment of any damages as may be awarded against him on the
101 appeal. *The provisions of § 16.1-109 shall apply to bonds posted pursuant to this section.*

102 This subsection shall not apply to release on bail pursuant to other subsections of this section or
103 § 16.1-298.

104 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
105 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
106 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
107 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
108 (§ 16.1-266 et seq.) of this chapter.

109 J. In any case which has been referred or transferred from a circuit court to a juvenile court and an
110 appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit
111 court in the same locality as the juvenile court to which the case had been referred or transferred.