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HOUSE BILL NO. 1327

Offered January 9, 2008

Prefiled January 9, 2008

A *BILL to amend the Code of Virginia by adding a section numbered 16.1-241.4, relating to custody and visitation; ex parte orders.*

Patron—Peace

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 16.1-241.4 as follows:

§ 16.1-241.4. Ex parte proceedings; custody and visitation.

A. Except as specifically authorized in this chapter or in Title 20, no court exercising jurisdiction under this chapter shall enter an ex parte order establishing or modifying the custody or visitation of a child unless the court, based upon a sworn written application, finds as follows:

1. The child would be (i) subjected to an imminent threat to life or health to the extent that severe or irreparable injury would be likely to result if the order is not entered; or (ii) in cases to establish custody or visitation, removed from the jurisdiction of the court to the child's imminent detriment before a full dispositional hearing can be held; and

2. The party applying for the order demonstrates that:

a. Giving notice of the application and hearing to the parents, guardian, legal custodian, or other person standing in loco parentis prior to a full hearing would compound the threat to the child; or

b. He has made a good faith attempt to give actual notice of the application and hearing to the parents, guardian, legal custodian, or other person standing in loco parentis.

B. An ex parte order entered pursuant to subsection A shall:

1. Recite the facts upon which the conclusion of imminent threat to the child's life or health or of immediate detriment because of removal is based;

2. Recite the facts upon which the conclusion that the party applying for the order made a good faith attempt to give actual notice of the application and hearing or that the giving of actual notice would compound the threat to the child; and

3. Schedule a preliminary hearing on custody or visitation to be held within five business days after the ex parte order is entered. The order and notice of the preliminary hearing shall be served upon the parents, guardian, legal custodian, or other person standing in loco parentis at least 24 hours prior to the hearing.

C. At the preliminary hearing scheduled pursuant to subsection B, the party applying for the order shall be required to present his application de novo. Any order resulting from this hearing shall be preliminary pending a full dispositional hearing unless all parties agree that the preliminary hearing shall constitute a full dispositional hearing.

INTRODUCED

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