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SENATE BILL NO. 98

Offered January 13, 2010

Prefiled January 6, 2010

A BILL to amend and reenact § 16.1-252 of the Code of Virginia, relating to preliminary removal orders.

Patron—Quayle

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-252 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-252. Preliminary removal order; hearing.

A. A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

B. Prior to the removal hearing, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is twelve years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing; (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child; and (iii) notice that child support will be considered if a determination is made that the child must be removed from the home.

C. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf. If the child was fourteen years of age or under on the date of the alleged offense and is sixteen or under at the time of the hearing, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the Department of Social Services, the local department of social services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of § 63.2-1521 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least forty-eight hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

E. In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irreparable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition; and

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

F. If the court determines that pursuant to subsection E hereof the removal of the child is proper, the court shall:

1. Order that the child be placed in the temporary care and custody of a suitable person, subject to the provisions of subsection F1 of this section and under the supervision of the local department of social services, with consideration being given to placement in the temporary care and custody of a relative or other interested individual, including grandparents, until such time as the court enters an order of disposition pursuant to § 16.1-278.2, or, if such placement is not available, in the care and

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59 custody of a suitable agency;

60 2. Order that reasonable visitation be allowed between the child and his parents, guardian, legal
61 custodian or other person standing in loco parentis, and between the child and his siblings, if such
62 visitation would not endanger the child's life or health; and

63 3. Order that the parent or other legally obligated person pay child support pursuant to § 16.1-290.

64 In addition, the court may enter a preliminary protective order pursuant to § 16.1-253 imposing
65 requirements and conditions as specified in that section which the court deems appropriate for protection
66 of the welfare of the child.

67 F1. Prior to the entry of an order pursuant to subsection F of this section transferring temporary
68 custody of the child to a relative or other interested individual, including grandparents, the court shall
69 consider whether the relative or other interested individual is one who (i) is willing and qualified to
70 receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child;
71 and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order
72 transferring temporary custody to a relative or other interested individual should provide for compliance
73 with any preliminary protective order entered on behalf of the child in accordance with the provisions of
74 § 16.1-253; initiation and completion of the investigation as directed by the court and court review of
75 the child's placement required in accordance with the provisions of § 16.1-278.2; and, as appropriate,
76 ongoing provision of social services to the child and the temporary custodian.

77 G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the
78 allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of
79 abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person
80 responsible for the care and custody of the child, the child's guardian ad litem or the local department of
81 social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory
82 hearing to be held within thirty days of the date of the initial preliminary removal hearing. The
83 adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been
84 proven by a preponderance of the evidence. Parties who are present at the preliminary removal order
85 hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present
86 *and who have not waived their right to participate in the preliminary removal order hearing pursuant to*
87 *subsection K* shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may
88 be entered, although a party to the preliminary removal order hearing *waives his right to participate*
89 *pursuant to subsection K* or fails to appear and is not represented by counsel, provided personal or
90 substituted service was made on the person, or the court determines that such person cannot be found,
91 after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot
92 be found or his post office address cannot be ascertained after reasonable effort.

93 The preliminary removal order and any preliminary protective order issued shall remain in full force
94 and effect pending the adjudicatory hearing.

95 H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed
96 from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant
97 to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary removal
98 order hearing and shall be held within seventy-five days of the preliminary removal order hearing. If an
99 adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be
100 scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal
101 order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are
102 not present *and who have not waived their right to participate in the preliminary removal order hearing*
103 *pursuant to subsection K* shall be summoned to appear as provided in § 16.1-263.

104 I. The local department of social services having legal custody of a child as defined in § 16.1-228 (i)
105 shall not be required to comply with the requirements of this section in order to redetermine where and
106 with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

107 J. Violation of any order issued pursuant to this section shall constitute contempt of court.

108 K. *The court shall not accept any waiver by a parent, guardian, legal custodian or other person*
109 *standing in loco parentis of a child alleged to have been abused or neglected of his right to participate*
110 *in a full evidentiary hearing, pursuant to subsection D, or an adjudicatory hearing pursuant to*
111 *subsection G, unless the court first ascertains, by oral examination, that such waiver is voluntary and*
112 *intelligently made. If the court makes such ascertainment, it shall provide such parent, guardian, legal*
113 *custodian or other person with a statement to be executed by him in court and under oath to document*
114 *his waiver. The statement shall be in a form designed and provided by the Supreme Court.*