

12100814D

## HOUSE BILL NO. 673

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact §§ 16.1-241 and 19.2-152.10 of the Code of Virginia, relating to protective orders; transfer of venue.

Patrons—Surovell and Kory; Senator: Petersen

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 16.1-241 and 19.2-152.10 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,

INTRODUCED

HB673

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, *and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.10 that have been transferred to the juvenile and domestic relations district court pursuant to subsection B of § 19.2-152.10.*

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. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

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. 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

182 perform the abortion without consent of or notice to an authorized person.

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

186 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent  
187 has been obtained or the minor delivers to the physician a court order entered pursuant to this section  
188 and the physician or his agent provides such notice as such order may require. However, neither consent  
189 nor judicial authorization nor notice shall be required if the minor declares that she is abused or  
190 neglected and the attending physician has reason to suspect that the minor may be an abused or  
191 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with  
192 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the  
193 facts justifying the exception in the minor's medical record.

194 For purposes of this subsection:

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

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

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

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

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

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

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

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

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

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 § 19.2-152.10. Protective order.

235 A. The court may issue a protective order pursuant to this chapter to protect the health and safety of  
236 the petitioner and family or household members of a petitioner upon (i) the issuance of a petition or  
237 warrant for, or a conviction of, any criminal offense resulting from the commission of an act of  
238 violence, force, or threat or (ii) a hearing held pursuant to subsection D of § 19.2-152.9. A protective  
239 order issued under this section may include any one or more of the following conditions to be imposed  
240 on the respondent:

- 241 1. Prohibiting acts of violence, force, or threat or criminal offenses that may result in injury to  
242 person or property;
- 243 2. Prohibiting such contacts by the respondent with the petitioner or family or household members of

the petitioner as the court deems necessary for the health or safety of such persons; and

3. Any other relief necessary to prevent (i) acts of violence, force, or threat, (ii) criminal offenses that may result in injury to person or property, or (iii) communication or other contact of any kind by the respondent.

*B. If a protective order is sought in a general district court pursuant to this section, the court may, on its own motion or on the motion of either the petitioner or the respondent made prior to the admission of any evidence, transfer the case to a circuit court or juvenile and domestic relations district court if the general district court determines that either the petitioner or respondent is a party to a substantially related action pending in either such court.*

C. The protective order may be issued for a specified period of time up to a maximum of two years. The protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Prior to the expiration of the protective order, a petitioner may file a written motion requesting a hearing to extend the order. Proceedings to extend a protective order shall be given precedence on the docket of the court. The court may extend the protective order for a period not longer than two years to protect the health and safety of the petitioner or persons who are family or household members of the petitioner at the time the request for an extension is made. The extension of the protective order shall expire at 11:59 p.m. on the last day specified or at 11:59 p.m. on the last day of the two-year period if no date is specified. Nothing herein shall limit the number of extensions that may be requested or issued.

~~C.D.~~ A copy of the protective order shall be served on the respondent and provided to the petitioner as soon as possible. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court and shall forthwith forward the attested copy of the protective order and containing any such identifying information to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith upon the respondent and due return made to the court. However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court to the primary law-enforcement agency providing service and entry of protective orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the respondent. Upon service, the agency making service shall enter the date and time of service and other appropriate information required into the Virginia Criminal Information Network and make due return to the court. If the order is later dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders, and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network as described above and the order shall be served forthwith and due return made to the court.

~~D.E.~~ Except as otherwise provided, a violation of a protective order issued under this section shall constitute contempt of court.

~~E.F.~~ The court may assess costs and attorneys' fees against either party regardless of whether an order of protection has been issued as a result of a full hearing.

~~F.G.~~ Any judgment, order or decree, whether permanent or temporary, issued by a court of appropriate jurisdiction in another state, the United States or any of its territories, possessions or Commonwealths, the District of Columbia or by any tribal court of appropriate jurisdiction for the purpose of preventing violent or threatening acts or harassment against or contact or communication with or physical proximity to another person, including any of the conditions specified in subsection A, shall be accorded full faith and credit and enforced in the Commonwealth as if it were an order of the Commonwealth, provided reasonable notice and opportunity to be heard were given by the issuing jurisdiction to the person against whom the order is sought to be enforced sufficient to protect such person's due process rights and consistent with federal law. A person entitled to protection under such a foreign order may file the order in any appropriate district court by filing with the court, an attested or exemplified copy of the order. Upon such a filing, the clerk shall forthwith forward an attested copy of

305 the order to the primary law-enforcement agency responsible for service and entry of protective orders  
306 which shall, upon receipt, enter the name of the person subject to the order and other appropriate  
307 information required by the Department of State Police into the Virginia Criminal Information Network  
308 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. Where  
309 practical, the court may transfer information electronically to the Virginia Criminal Information Network.

310 Upon inquiry by any law-enforcement agency of the Commonwealth, the clerk shall make a copy  
311 available of any foreign order filed with that court. A law-enforcement officer may, in the performance  
312 of his duties, rely upon a copy of a foreign protective order or other suitable evidence which has been  
313 provided to him by any source and may also rely upon the statement of any person protected by the  
314 order that the order remains in effect.

315 ~~G.H.~~ Either party may at any time file a written motion with the court requesting a hearing to  
316 dissolve or modify the order. Proceedings to modify or dissolve a protective order shall be given  
317 precedence on the docket of the court.

318 ~~H.I.~~ Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's  
319 office, nor any employee of them, may disclose, except among themselves, the residential address,  
320 telephone number, or place of employment of the person protected by the order or that of the family of  
321 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme  
322 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

323 ~~I.J.~~ No fees shall be charged for filing or serving petitions pursuant to this section.

324 ~~J.K.~~ As used in this section:

325 "Copy" includes a facsimile copy; and

326 "Protective order" includes an initial, modified or extended protective order.