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HOUSE BILL NO. 966**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 3, 2012)

(Patron Prior to Substitute—Delegate Bell, Robert B.)

*A BILL to amend and reenact § 16.1-266 of the Code of Virginia, relating to appointment of guardian ad litem.***Be it enacted by the General Assembly of Virginia:****1. That § 16.1-266 of the Code of Virginia is amended and reenacted as follows:**

§ 16.1-266. Appointment of counsel and guardian ad litem.

A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition seeking termination of residual parental rights or who is otherwise before the court pursuant to subdivision A 4 of § 16.1-241 or § 63.2-1230, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

B. Prior to the detention hearing held pursuant to § 16.1-250, the court shall appoint a qualified and competent attorney-at-law to represent the child unless an attorney has been retained and appears on behalf of the child. For the purposes of appointment of counsel for the detention hearing held pursuant to § 16.1-250 only, a child's indigence shall be presumed. Nothing in this subsection shall prohibit a judge from releasing a child from detention prior to appointment of counsel.

C. Subsequent to the detention hearing, if any, and prior to the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services, in need of supervision or delinquent, such child and his parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal services pursuant to § 16.1-267 and be given an opportunity to:

1. Obtain and employ counsel of the child's own choice; or

2. Request that the court appoint counsel, provided that before counsel is appointed or the court continues any appointment previously made pursuant to subsection B, the court shall determine that the child is indigent within the contemplation of the law pursuant to guidelines set forth in § 19.2-159 by requiring the child's parent, guardian, legal custodian or other person standing in loco parentis to complete a statement of indigence substantially in the form provided by § 19.2-159 and a financial statement, and upon determination of indigence the court shall appoint an attorney from the list maintained by the Indigent Defense Commission pursuant to § 19.2-163.01 to represent the child; or

3. Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, and such waiver is consistent with the interests of the child. Such written waiver shall be in accordance with law and shall be filed with the court records of the case. A child who is alleged to have committed an offense that would be a felony if committed by an adult, may waive such right only after he consults with an attorney and the court determines that his waiver is free and voluntary. The waiver shall be in writing, signed by both the child and the child's attorney and shall be filed with the court records of the case.

D. A judge, clerk or probation officer shall inform the parent or guardian of his right to counsel prior to the adjudicatory hearing of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in subdivision A 2a of § 16.1-241 and prior to a hearing at which a parent could be subjected to the loss of residual parental rights. In addition, prior to the hearing by the court of any case involving any other adult charged with abuse or neglect of a child, this adult shall be informed of his right to counsel. This adult and the parent or guardian shall be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held.

Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to § 16.1-281, a foster care review hearing pursuant to § 16.1-282 and a permanency planning hearing

60 pursuant to § 16.1-282.1, the court shall consider appointing counsel to represent the child's parent or
61 guardian.

62 E. In those cases described in subsections A, B, C and D, which in the discretion of the court require
63 counsel or a guardian ad litem to represent the child or children or the parent or guardian or other adult
64 party in addition to the representation provided in those subsections, a discreet and competent
65 attorney-at-law may be appointed by the court as counsel or a guardian ad litem.

66 F. In all other cases which in the discretion of the court require counsel or a guardian ad litem, or
67 both, to represent the child or children or the parent or guardian, discreet and competent attorneys-at-law
68 may be appointed by the court. However, in cases where the custody of a child or children is the subject
69 of controversy or requires determination and each of the parents or other persons claiming a right to
70 custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent
71 the interests of the child or children unless the court finds, at any stage in the proceedings in a specific
72 case, that the interests of the child or children are not otherwise adequately represented.

73 *G. Notwithstanding the provisions of subsections E and F, the court shall not appoint a guardian ad*
74 *litem to represent the child or children or the parent or guardian in any case in which the child or*
75 *children are alleged to have committed a delinquent act as defined in § 16.1-228 unless the court finds,*
76 *at any stage of the proceedings, that there is a conflict of interests between the child or children and*
77 *the parent or guardian of the child or children, that no parent or guardian of the child or children can*
78 *be located, or that good cause exists to make such an appointment.*

79 H. Any state or local agency, department, authority or institution and any school, hospital, physician
80 or other health or mental health care provider shall permit a guardian ad litem or counsel for the child
81 appointed pursuant to this section to inspect and copy, without the consent of the child or his parents,
82 any records relating to the child whom the guardian or counsel represents upon presentation by him of a
83 copy of the court order appointing him or a court order specifically allowing him such access. Upon
84 request therefor by the guardian ad litem or counsel for the child made at least 72 hours in advance, a
85 mental health care provider shall make himself available to conduct a review and interpretation of the
86 child's treatment records which are specifically related to the investigation. Such a request may be made
87 in lieu of or in addition to inspection and copying of the records.