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HOUSE BILL NO. 1241

Offered January 19, 2016

A BILL to amend and reenact §§ 16.1-69.21, 16.1-241, and 16.1-266.1 of the Code of Virginia, relating to standards for guardians ad litem appointed in custody and visitation cases; certification form; substitute judges in custody and visitation proceedings.

Patron—Ingram (By Request)

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.21, 16.1-241, and 16.1-266.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.21. When substitute to serve; his powers and duties.

In the event of the inability of the judge to perform the duties of his office or any of them by reason of sickness, absence, vacation, interest in the proceeding or parties before the court, or otherwise, such judge or a person acting on his behalf shall promptly notify the appropriate chief district judge of such inability. ~~¶~~ *Except for proceedings held pursuant to subdivision A 3 of § 16.1-241, if* the chief district judge determines that the provisions of § 16.1-69.35 have been complied with or cannot reasonably be done within the time permitted and that no other full-time or retired judge is reasonably available to serve, the chief district judge may direct a substitute judge to serve as a judge of the court, which substitute may serve concurrently with one or more of the judges of the court or alone. In designating a substitute judge to serve, the chief district judge shall, whenever possible, select a substitute judge who does not regularly practice law in the court requiring the substitute. Where reasonably available, the chief district judge may designate a substitute judge from another district within the Commonwealth. The committee on district courts may adopt policies and procedures governing the utilization of substitute judges. In such event, those policies and procedures will, where applicable, control. While acting as judge a substitute judge shall perform the same duties, exercise the same power and authority, and be subject to the same obligations as prescribed herein for the judge. While serving as judge of the court the judge or the substitute judge may perform all acts with respect to the proceedings, judgments and acts of any other judge in connection with any action or proceeding then pending or theretofore disposed of in the court except as otherwise provided in this chapter in the same manner and with the same force and effect as if they were his own.

§ 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.

No substitute judge shall be directed to preside over any proceeding held pursuant to subdivision 3.

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HB1241

59 In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated
60 in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile
61 court shall be limited to conducting a preliminary hearing to determine if there is probable cause to
62 believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at
63 the time of the commission of the alleged offense, and any matters related thereto. In any case in which
64 the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of
65 § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given
66 notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited
67 to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile
68 committed the act alleged and that the juvenile was 14 years of age or older at the time of the
69 commission of the alleged offense, and any matters related thereto. A determination by the juvenile
70 court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge
71 to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge.
72 In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile
73 court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as
74 provided in § 16.1-269.6.

75 In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a
76 violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a
77 lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be
78 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

79 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
80 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
81 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
82 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
83 be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family
84 members. A party with a legitimate interest shall not include any person (i) whose parental rights have
85 been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives
86 from or through a person whose parental rights have been terminated by court order, either voluntarily
87 or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood
88 relatives and family members, if the child subsequently has been legally adopted, except where a final
89 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of
90 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another
91 state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was
92 conceived as a result of such violation. The authority of the juvenile court to consider a petition
93 involving the custody of a child shall not be proscribed or limited where the child has previously been
94 awarded to the custody of a local board of social services.

95 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
96 provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental
97 illness or judicial certification of eligibility for admission to a training center for persons with
98 intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.
99 Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general
100 district court.

101 C. Except as provided in subsections D and H, judicial consent to such activities as may require
102 parental consent may be given for a child who has been separated from his parents, guardian, legal
103 custodian or other person standing in loco parentis and is in the custody of the court when such consent
104 is required by law.

105 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married
106 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person
107 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person
108 standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown,
109 (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such
110 consent or provide such treatment when requested by the judge to do so.

111 E. Any person charged with deserting, abandoning or failing to provide support for any person in
112 violation of law.

113 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

114 1. Who has been abused or neglected;

115 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817
116 or is otherwise before the court pursuant to subdivision A 4; or

117 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
118 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
119 conduct of the child complained of in the petition.

120 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other

person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services that are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily 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, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

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.).

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. [Repealed.]

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 for the purpose of obtaining the court's assistance with the execution of consent to an adoption when the consent to an adoption is executed pursuant to the laws of another state and the laws of that state provide for the execution of consent to an adoption in the court of the Commonwealth.

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

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

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

For purposes of this subsection:

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

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

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

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

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

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical

procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

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

X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor children.

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

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M, or R.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection W shall be guilty of a Class 3 misdemeanor.

§ 16.1-266.1. Standards for attorneys appointed as guardians ad litem; list of qualified attorneys.

A. On or before January 1, 1995, the Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall adopt standards for attorneys appointed as guardians ad litem pursuant to § 16.1-266. The standards shall, in so far as practicable, take into consideration the following criteria: (i) license or permission to practice law in Virginia, (ii) current training in the roles, responsibilities and duties of guardian ad litem representation, (iii) familiarity with the court system and general background in juvenile law, and (iv) demonstrated proficiency in this area of the law.

A1. Prior to any custody or visitation proceeding where such an attorney has been appointed as a guardian ad litem pursuant to § 16.1-266, such guardian ad litem shall submit to the court a form certifying that he has complied with all such applicable standards. Such form shall include a list of the individuals interviewed by the guardian ad litem in his investigation of the case.

B. The Judicial Council shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as guardians ad litem based upon the standards and shall make the names available to the courts. If no attorney who is on the list is reasonably available, a judge in his discretion, may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

2. The Judicial Council of Virginia, in conjunction with the Virginia State Bar and the Virginia Bar Association, shall promulgate a form in accordance with subsection A1 of § 16.1-266.1 of the Code of Virginia, as created by this act, no later than July 1, 2017.