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SENATE BILL NO. 39

Offered January 10, 2018

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A BILL to amend and reenact §§ 16.1-296 and 16.1-296.2 of the Code of Virginia and to repeal § 16.1-69.48:5 of the Code of Virginia, relating to fee for filing certain petitions in juvenile and domestic relations district court.

Patron—Favola

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 16.1-296 and 16.1-296.2 of the Code of Virginia are amended and reenacted as follows:****§ 16.1-296. Jurisdiction of appeals; procedure; fee.**

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken to the circuit court within 10 days from the entry of a final judgment, order or conviction and shall be heard de novo. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within 30 days from entry of a final order or judgment. Protective orders issued pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of 12 persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or 16.1-273.

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

C2. Where an appeal is taken by a juvenile on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8 and the juvenile is in a secure facility pending the appeal, the circuit court, when practicable, shall hold a hearing on the merits of the case within 45 days of the filing of the appeal. Upon receipt of the notice of appeal from the juvenile court, the circuit court shall provide a copy of the order and a copy of the notice of appeal to the attorney for the Commonwealth within seven days after receipt of notice of an appeal. The time limitations shall be tolled during any period in which the juvenile has escaped from custody. A juvenile held continuously in secure detention shall be released from confinement if there is no hearing on the merits of his case within 45 days of the filing of the appeal. The circuit court may extend the time limitations for a reasonable period of time based upon good cause shown, provided the basis for such extension is recorded in writing and filed among the papers of the proceedings.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within 90 days of the perfecting of the appeal. An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in

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59 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

60 F. In all other cases on appeal, proceedings in the circuit court shall be heard without a jury;
61 however, hearing of an issue by an advisory jury may be allowed, in the discretion of the judge, upon
62 the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be
63 given precedence on the docket of the court over other civil appeals taken to the circuit court from the
64 district courts, but shall otherwise be docketed and processed as other civil cases.

65 G. Costs, taxes, and fees on appealed cases shall be assessed only in those cases in which a trial fee
66 could have been assessed in the juvenile and domestic relations court and shall be collected in the
67 circuit court, except that the appeal to circuit court of any case in which a fee ~~either was or could have~~
68 ~~been assessed pursuant to § 16.1-69.48.5~~ *the court made a determination regarding the custody or*
69 *visitation of a child* shall also be in accordance with § 16.1-296.2.

70 *G1. The clerk shall collect any applicable fees for service of process of the notice of appeal in the*
71 *circuit court from the appellant prior to transmitting the case to the clerk of the circuit court. For*
72 *purposes of this subsection, service of process in the circuit court may include service on the appellee*
73 *by the sheriff or private process server or certified or registered mail and service on the attorney for the*
74 *appellee by regular mail.*

75 H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic
76 relations district court except for that portion of any order or judgment establishing a support arrearage
77 or suspending payment of support during pendency of an appeal. In cases involving support, no appeal
78 shall be allowed until the party applying for the same or someone for him gives bond, in an amount and
79 with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment
80 as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment
81 of the court in which it was rendered. Upon appeal from a conviction for failure to support or from a
82 finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations
83 district court may require the party applying for the appeal or someone for him to give bond, with or
84 without surety, to insure his appearance and may also require bond in an amount and with sufficient
85 surety to secure the payment of prospective support accruing during the pendency of the appeal. An
86 appeal will not be perfected unless such appeal bond as may be required is filed within 30 days from
87 the entry of the final judgment or order. However, no appeal bond shall be required of the
88 Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or
89 an insane person, or the interest of a county, city or town.

90 If bond is furnished by or on behalf of any party against whom judgment has been rendered for
91 money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as
92 may be entered against the party on appeal, and for the payment of all damages which may be awarded
93 against him in the appellate court. If the appeal is by a party against whom there is no recovery, the
94 bond shall be conditioned for the payment of any damages as may be awarded against him on the
95 appeal. The provisions of § 16.1-109 shall apply to bonds required pursuant to this subsection.

96 This subsection shall not apply to release on bail pursuant to other subsections of this section or
97 § 16.1-298.

98 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
99 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
100 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
101 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
102 (§ 16.1-266 et seq.) of this chapter.

103 J. In any case which has been referred or transferred from a circuit court to a juvenile court and an
104 appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit
105 court in the same locality as the juvenile court to which the case had been referred or transferred.

106 **§ 16.1-296.2. Appeals of certain custody and visitation proceedings.**

107 A. In any matter in which a filing fee ~~either was or could have been assessed pursuant to~~
108 ~~§ 16.1-69.48.5~~ *the court has made a determination regarding the custody or visitation of a child*, no
109 appeal shall be allowed unless and until the party applying for appeal shall, within 10 days from the
110 entry of the final judgment or order, either (i) pay to the clerk of the court from which the appeal is
111 taken the amount of the writ tax of the court to which the appeal is taken and all other applicable costs
112 or (ii) file with the clerk of the court from which the appeal is taken a petition to have the court to
113 which the appeal is taken determine that the writ tax and costs need not be paid on account of poverty
114 as provided in § 17.1-606. The judge or clerk of any court from which the appeal is taken shall
115 promptly transmit to the clerk of the appellate court the original pleadings, together with all exhibits and
116 other papers filed in the trial of the case, and either (i) the writ tax and costs paid or (ii) a petition filed
117 to have the court to which the appeal is taken determine that the writ tax and costs need not be paid on
118 account of poverty as provided in § 17.1-606. Upon receipt of the foregoing by the clerk of the appellate
119 court, the case shall then be docketed.

120 B. Notwithstanding any other provision of law, the writ tax of the court to which the appeal is taken

121 and other applicable costs shall be assessed only once for all custody and visitation petitions
122 simultaneously appealed by a single appellant.
123 **2. That § 16.1-69.48:5 of the Code of Virginia is repealed.**

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