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SENATE BILL NO. 1201

Offered January 9, 2019

Prefiled January 4, 2019

A BILL to amend and reenact § 16.1-243 of the Code of Virginia, relating to transfer of venue; delinquency; adjudication.

Patron—Stuart

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-243 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-243. Venue.

A. Original venue:

1. Cases involving children, other than support or where protective order issued: Proceedings with respect to children under this law, except support proceedings as provided in subdivision 2 or family abuse proceedings as provided in subdivision 3, shall:

a. Delinquency: If delinquency is alleged, be commenced in the city or county where the acts constituting the alleged delinquency occurred or they may, with the written consent of the child and the attorney for the Commonwealth for both jurisdictions, be commenced in the city or county where the child resides;

b. Custody or visitation: In cases involving custody or visitation, be commenced in the court of the city or county which, in order of priority, (i) is the home of the child at the time of the filing of the petition, or had been the home of the child within six months before the filing of the petition and the child is absent from the city or county because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continues to live in the city or county; (ii) has significant connection with the child and in which there is substantial evidence concerning the child's present or future care, protection, training and personal relationships; (iii) is where the child is physically present and the child has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent; or (iv) it is in the best interest of the child for the court to assume jurisdiction as no other city or county is an appropriate venue under the preceding provisions of this subdivision;

c. Adoption: In parental placement adoption consent hearings pursuant to §§ 16.1-241, 63.2-1233, and 63.2-1237, be commenced in any city or county, provided, however, that diligent efforts shall first be made to commence such hearings (i) in the city or county where the child to be adopted was born, (ii) in the city or county where the birth parent(s) reside, or (iii) in the city or county where the prospective adoptive parent(s) reside. In cases in which a hearing is commenced in a city or county other than one described in clause (i), (ii), or (iii), the petitioner shall certify in writing to the court that diligent efforts to commence a hearing in such city or county have been made but have proven ineffective;

d. Abuse and neglect: In cases involving an allegedly abused or neglected child, be commenced (i) in the city or county where the child resides, (ii) in the city or county where the child is present when the proceedings are commenced, or (iii) in the city or county where the alleged abuse or neglect occurred; and

e. All other cases: In all other proceedings, be commenced in the city or county where the child resides or in the city or county where the child is present when the proceedings are commenced.

2. Support: Proceedings that involve child or spousal support or child and spousal support, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, shall be commenced in the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.

3. Family abuse: Proceedings in which an order of protection is sought as a result of family abuse shall be commenced where (i) either party has his or her principal residence (ii) the abuse occurred or (iii) a protective order was issued if at the time the proceeding is commenced the order is in effect to protect the petitioner or a family or household member of the petitioner.

B. Transfer of venue:

1. Generally: Except in custody, visitation and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court may at any time, on its own motion or a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the

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59 court receiving the transfer may deem proper. However, such transfer may occur ~~only after adjudication~~
60 in delinquency proceedings *only after adjudication, which shall include, for the purposes of this section,*
61 *a finding of facts sufficient to justify a finding of delinquency.*

62 2. Custody and visitation: In custody and visitation cases, if venue lies in one of several cities or
63 counties, the court in which the motion for transfer is made shall determine which such city or county is
64 the most appropriate venue unless the parties mutually agree to the selection of venue. In the
65 consideration of the motion, the best interests of the child shall determine the most appropriate forum.

66 3. Support: In support proceedings, exclusive of proceedings arising under Chapter 5 (§ 20-61 et
67 seq.) of Title 20, if the respondent resides in a city or county in the Commonwealth and the proceeding
68 is commenced in a court of another city or county, that court may, at any time on its own motion or a
69 motion of a party for good cause shown or by agreement of the parties, transfer the proceeding to the
70 city or county of the respondent's residence for such further action or proceedings as the court receiving
71 the transfer may deem proper. For the purposes of determining venue of cases involving support, the
72 respondent's residence shall include any city or county in which the respondent has resided within the
73 last six months prior to the commencement of the proceeding or in which the respondent is residing at
74 the time that the motion for transfer of venue is made. If venue is transferable to one of several cities or
75 counties, the court in which the motion for transfer is made shall determine which such city or county is
76 the most appropriate venue unless the parties mutually agree to the selection of such venue.

77 When the support proceeding is a companion case to a child custody or visitation proceeding, the
78 provisions governing venue in the proceeding involving the child's custody or visitation shall govern.

79 4. Subsequent transfers: Any court receiving a transferred proceeding as provided in this section may
80 in its discretion transfer such proceeding to a court in an appropriate venue for good cause shown based
81 either upon changes in circumstances or mistakes of fact or upon agreement of the parties. In any
82 transfer of venue in cases involving children, the best interests of the child shall be considered in
83 deciding if and to which court a transfer of venue would be appropriate.

84 5. Enforcement of orders for support, maintenance and custody: Any juvenile and domestic relations
85 district court to which a suit is transferred for enforcement of orders pertaining to support, maintenance,
86 care or custody pursuant to § 20-79 (c) may transfer the case as provided in this section.

87 C. Records: Originals of all legal and social records pertaining to the case shall accompany the
88 transfer of venue. Records imaged from the original documents shall be considered original documents
89 for purposes of the transfer of venue. The transferor court may, in its discretion, retain copies as it
90 deems appropriate.