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HOUSE BILL NO. 893

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 16.1-266.1, 16.1-267, and 63.2-1505 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 11 of Title 16.1 an article numbered 6.1, consisting of sections numbered 16.1-268.1 through 16.1-268.4, relating to standards for attorneys appointed to represent parents or guardians; child dependency cases; Virginia Parent Advocacy Commission established.

Patrons—McClure, Carr, Rasoul, Anthony, Askew, Bennett-Parker, Callsen, Clark, Cohen, Cole, Convors-Fowler, Cousins, Feggans, Gardner, Glass, Henson, Hernandez, Jones, Keys-Gamarra, Krizek, Laufer, Maldonado, Martinez, Reaser, Reid, Seibold, Shin, Sickles, Simonds, Srinivasan, Sullivan, Thomas, Tran, Watts and Wilt; Senators: Deeds and Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-266.1, 16.1-267, and 63.2-1505 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11 of Title 16.1 an article numbered 6.1, consisting of sections numbered 16.1-268.1 through 16.1-268.4, as follows:

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

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, ~~insofar as to the extent~~ 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.

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.

C. Counsel appointed for a parent or guardian pursuant to subsection D of § 16.1-266 *before June 30, 2025*, shall be selected from the list of attorneys who are qualified to serve as guardians ad litem. If no attorney who is on the list is reasonably available or appropriate considering the circumstances of the parent or case, a judge ~~in his discretion~~ may appoint any discreet and competent attorney who is admitted to practice law in Virginia.

D. *On or before June 30, 2025, the Judicial Council of Virginia, in conjunction with the Virginia State Bar, and pursuant to the American Bar Association's Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases, shall adopt standards for the qualification and performance of attorneys appointed pursuant to § 16.1-266 to represent a parent or guardian of a child when such child is the subject of a child dependency case. The standards shall, to the extent 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 parent or guardian representation; (iii) familiarity with the court system and a general background in juvenile law; and (iv) demonstrated proficiency in this area of the law.*

E. *On or before June 30, 2025, the Office of the Executive Secretary of the Supreme Court of Virginia, in conjunction with the Virginia State Bar and the Office of the Children's Ombudsman, shall develop initial qualifying educational programs on the standards of practice for attorneys representing the parent or guardian of a child who is the subject of a child dependency case, as well as educational programs for judges, guardians ad litem, and agency attorneys regarding such standards for qualification and practice.*

F. *Beginning July 1, 2025, the Judicial Council of Virginia shall maintain a list of attorneys admitted to practice law in Virginia who are qualified to be appointed to represent indigent parents involved in a child dependency case based on the standards required by this section and shall make such names available to the courts. If no attorney on the list is reasonably available or appropriate considering the circumstances of the parent or guardian or the case, a judge may appoint any discreet and competent attorney who is admitted to practice law in Virginia.*

INTRODUCED

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56 *On or after July 1, 2025, no person currently serving or accepting appointments from a court in the*
57 *Commonwealth as a guardian ad litem for children shall be appointed to represent a parent or*
58 *guardian in a child dependency case.*

59 *For the purposes of this section, a "child dependency case" means a case that involves a child who*
60 *is the subject of an emergency removal order pursuant to § 16.1-251, a preliminary removal hearing*
61 *pursuant to § 16.1-252, a preliminary protective order pursuant to § 16.1-253, an adjudicatory or*
62 *dispositional hearing on a petition alleging abuse or neglect of such child pursuant to § 16.1-278.2, a*
63 *foster care review hearing pursuant to § 16.1-282, a permanency planning hearing pursuant to*
64 *§ 16.1-282.1, an annual foster care review hearing pursuant to § 16.1-282.2, or a hearing on a petition*
65 *seeking the termination of parental rights pursuant to § 16.1-283.*

66 **§ 16.1-267. Compensation of appointed counsel.**

67 A. When the court appoints counsel to represent a child pursuant to subsection A of § 16.1-266 and,
68 after an investigation by the court services unit, finds that the parents are financially able to pay for the
69 attorney and refuse to do so, the court shall assess costs against the parents for such legal services in the
70 maximum amount of that awarded the attorney by the court under the circumstances of the case,
71 considering such factors as the ability of the parents to pay and the nature and extent of the counsel's
72 duties in the case. Such amount shall not exceed the maximum amount specified in subdivision 1 of
73 § 19.2-163 if the action is in district court.

74 When the court appoints counsel to represent a child pursuant to subsection B or C of § 16.1-266
75 and, after an investigation by the court services unit, finds that the parents are financially able to pay for
76 the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part
77 against the parents for such legal services in the amount awarded the attorney by the court. Such amount
78 shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision 1
79 of § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay
80 for an attorney to represent the child, the court shall utilize the financial statement required by
81 § 19.2-159.

82 In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be
83 compensated for his services pursuant to § 19.2-163.

84 B. When the court appoints counsel to represent a parent, guardian, or other adult pursuant to
85 § 16.1-266, *or in a child dependency case as defined in § 16.1-266.1*, such counsel shall be compensated
86 for his services ~~pursuant to~~ *in accordance with clause (iii) of subdivision 2 § 19.2-163 for (i) an*
87 *emergency removal hearing pursuant to § 16.1-251; (ii) a preliminary removal hearing pursuant to*
88 *§ 16.1-252; (iii) a preliminary protective order pursuant to § 16.1-253; (iv) an adjudicatory or*
89 *dispositional hearing on a petition alleging abuse or neglect of such child pursuant to § 16.1-278.2; (v)*
90 *a foster care review hearing pursuant to § 16.1-282; (vi) a permanency planning hearing pursuant to*
91 *§ 16.1-282.1; or (vii) an annual foster care review hearing pursuant to § 16.1-282.2. When the court*
92 *appoints counsel to represent a parent in a hearing on a petition seeking the termination of parental*
93 *rights pursuant to § 16.1-283 before a juvenile and domestic relations district court or a circuit court,*
94 *such counsel shall be compensated for his services in accordance with clause (ii) of subdivision 2 of*
95 *§ 19.2-163.*

96 *B1. When the court appoints counsel to represent a parent in an appeal of a termination of parental*
97 *rights in the Court of Appeals, such counsel shall be compensated for his services in the same manner*
98 *as counsel appointed to represent a defendant who is appealing a felony conviction.*

99 C. 1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant
100 to § 16.1-266, the court shall order the parent, or other party with a legitimate interest who has filed a
101 petition in such proceeding, to reimburse the Commonwealth the costs of such services in an amount not
102 to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party
103 is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court
104 determines to be indigent pursuant to § 19.2-159 shall be required to pay reimbursement except where
105 the court finds good cause to do so. The Executive Secretary of the Supreme Court shall administer the
106 guardian ad litem program and shall report August 1 and January 1 of each year to the Chairmen of the
107 House Committee on Appropriations and the Senate Committee on Finance and Appropriations on the
108 amounts paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management
109 actions taken to further enhance savings under this program.

110 2. For good cause shown, or upon the failure by the guardian ad litem to substantially comply with
111 the standards adopted for attorneys appointed as guardians ad litem pursuant to § 16.1-266.1, the court
112 may adjust the cost sought by the guardian ad litem of such services.

113 3. For the purposes of this subsection, "other party with a legitimate interest" shall not include child
114 welfare agencies or local departments of social services, *or a foster parent who has not been identified*
115 *as a permanency option for the child through a foster care plan submitted to and approved by the*
116 *court.*

Virginia Parent Advocacy Commission.

§ 16.1-268.1. Virginia Parent Advocacy Commission; purpose.

The Virginia Parent Advocacy Commission (the Commission) is established as a supervisory commission in the executive branch of state government that shall be responsible for the powers, duties, operations, and responsibilities set forth in this article.

§ 16.1-268.2. Powers and duties of the Commission.

A. For the purposes of this section, "public parent counsel" means counsel compensated through public funds.

B. The Commission shall have the following powers and duties:

1. To publicize and enforce the qualification standards for attorneys seeking eligibility to serve as court-appointed or public parent counsel for indigent parents pursuant to § 16.1-266.1;

2. To develop initial training courses for attorneys wishing to serve as court-appointed or public parent counsel for indigent parents and to review and certify legal education courses that satisfy the continuing education required for attorneys to maintain their eligibility for receiving court appointments;

3. To maintain a list of attorneys admitted to practice law in Virginia who are qualified to serve as court-appointed or public parent counsel for indigent parents based on the standards developed in accordance with subsections D and E of § 16.1-266.1, to disseminate such list by July 1 of each year beginning on July 1, 2025, and to provide the Office of the Executive Secretary of the Supreme Court of Virginia with updates to such list throughout the year. In establishing and updating such list, the Commission shall consider all relevant factors, including an attorney's background, experience, and training and the Commission's assessment of whether the attorney is competent to provide quality legal representation;

4. To establish standards of practice for court-appointed or public parent counsel for indigent parents and guidelines for the removal of an attorney from such list of attorneys qualified to receive such appointments and a process to notify the Office of the Executive Secretary that such attorney has been removed from such list;

5. To establish official standards and compensation structures for qualified social workers and parent advocates to assist court-appointed or public parent counsel for indigent parents and to maintain a list of such qualified social workers and parent advocates;

6. To establish initial training courses for such social workers and parent advocates assisting court-appointed or public parent counsel in representing indigent parents and to review and certify continuing education courses that satisfy the requirements for such social workers and parent advocates to maintain their eligibility;

7. To establish and maintain multidisciplinary law offices to represent indigent parents in child dependency cases, as defined in § 16.1-266.1, in those localities, jurisdictions, or judicial districts as recommended by a work group convened by the Office of the Children's Ombudsman and as approved and funded by the General Assembly;

8. To periodically review and report the caseload handled by each office of parent counsel to the Chairmen of the House Committee for Courts of Justice, the Senate Committee on the Judiciary, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations;

9. To hire, employ, and remove an executive director, attorneys, and such other persons as necessary, and to authorize the executive director to appoint, after notice to the Commission, a deputy director, and for each local office a chief counsel. Such chief counsel shall devote his time to the duties of the office and shall not engage in the private practice of law;

10. To authorize the chief counsel of each office to employ assistants as authorized by the Commission and to employ such staff, including administrative, social work, or parent advocacy personnel, as may be necessary to carry out the duties imposed on the office;

11. To authorize the executive director of the Commission, in consultation with the chief counsel of a local office, to secure office space as needed, to purchase or rent office equipment, to purchase supplies, and to incur expenses as are necessary to carry out the duties imposed upon the chief counsel;

12. To approve requests for appropriations and receive and expend moneys appropriated by the General Assembly, to receive other moneys as become available, and to expend the same in order to carry out the duties imposed on the executive director;

13. To require and ensure each office annually collects and maintains caseload data in a case management database; and

14. To report annually on or before October 1 to the Chairmen of the House Committee for Courts of Justice, the Senate Committee on the Judiciary, the House Committee on Appropriations, and the Senate Committee on Finance and Appropriations on the status of indigent parent representation in the Commonwealth, including Virginia's ranking among the 50 states for compensation allowed for such counsel.

C. The Commission shall adopt rules and procedures for the conduct of its business. The

Commission may delegate to the executive director or, in the absence of the executive director, the deputy director, such powers and duties conferred upon the Commission as it deems appropriate, including powers and duties involving the exercise of discretion. The Commission shall ensure that the executive director complies with all Commission and statutory directives. Such rules and procedures may include establishing committees and the delegation of authority to such committees. The Commission shall review and confirm by a vote its rules and procedures and any delegation of authority to the executive director at least every three years.

D. The executive director shall, with the approval of the Commission, fix the compensation of each chief counsel and all other personnel in each office. The executive director shall also exercise and perform such other powers and duties as may be lawfully delegated to the executive director and such powers and duties as may be conferred or imposed upon the executive director by law.

§ 16.1-268.3. Membership; terms; quorum; meetings.

A. The Commission shall consist of 13 total members. Such members shall include the Chairmen of the House Committee for Courts of Justice and the Senate Committee on the Judiciary or their designees who shall be members of such committees and the Executive Secretary of the Supreme Court of Virginia or his designee, and the remaining 10 members shall be composed of the following: two attorneys designated by the Virginia State Bar, two persons appointed by the Governor, three persons appointed by the Speaker of the House of Delegates, and three persons appointed by the Senate Committee on Rules.

At least one of the attorneys appointed by the Virginia State Bar shall be an attorney in private practice with a demonstrated expertise in parent advocacy. Of the appointments made by the Governor, Speaker of the House, and Senate Committee on Rules (i) at least two shall be parents with previous experience in a child dependency case; (ii) at least one shall be an alumnus of foster care; and (iii) at least one shall be a professor of social work at an accredited higher institution of public education.

B. Any person who is a member of the Commission by virtue of his office shall hold a term that corresponds with the term of his office. A member who is appointed shall have a term of three years, after which he may be reappointed for another term of three years.

C. The Commission shall elect a chair and vice-chair from among its membership annually. The chair or chair's designee shall preside at all regular and called meetings of the Commission and shall have no additional duties or authority unless set by statute or by resolution of the Commission and annually confirmed by the Commission. A majority of the members shall constitute a quorum. The Commission shall meet at least four times per year, and meetings shall be held at the call of the chair or whenever three or more members so request.

§ 16.1-282.4. Compensation; expenses.

Legislative members of the Commission shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

§ 63.2-1505. Investigations by local departments.

A. An investigation requires the collection of information necessary to determine:

1. The immediate safety needs of the child;
2. The protective and rehabilitative services needs of the child and family that will deter abuse or neglect;
3. Risk of future harm to the child;
4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the family is unable or unwilling to participate in services;
5. Whether abuse or neglect has occurred;
6. If abuse or neglect has occurred, who abused or neglected the child; and
7. A finding of either founded or unfounded based on the facts collected during the investigation.

B. If the local department responds to the report or complaint by conducting an investigation, the local department shall:

1. Make immediate investigation and, if the report or complaint was based upon one of the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant to § 16.1-241.3;

2. Complete a report and enter it into the statewide automation system maintained by the Department;

3. Consult with the family to arrange for necessary protective and rehabilitative services to be provided to the child and his family;

4. If considering any change of placement for the child, including with a relative, the child's other parent or caregiver, fictive kin, or if filing a petition for custody or removal of the child and any siblings from the home, make a referral to court-appointed counsel or other counsel qualified to represent parents in child dependency cases as defined in § 16.1-266.1;

241 5. Petition the court for services deemed necessary including, but not limited to, removal of the child
242 or his siblings from their home;

243 5- 6. Determine within 45 days if a report of abuse or neglect is founded or unfounded and transmit
244 a report to such effect to the Department and to the person who is the subject of the investigation.
245 However, upon written justification by the local department, the time for such determination may be
246 extended not to exceed a total of 60 days or, in the event that the investigation is being conducted in
247 cooperation with a law-enforcement agency and both parties agree that circumstances so warrant, as
248 stated in the written justification, the time for such determination may be extended not to exceed 90
249 days. If through the exercise of reasonable diligence the local department is unable to find the child who
250 is the subject of the report, the time the child cannot be found shall not be computed as part of the total
251 time period allowed for the investigation and determination and documentation of such reasonable
252 diligence shall be placed in the record. In cases involving the death of a child or alleged sexual abuse of
253 a child who is the subject of the report, the time during which records necessary for the investigation of
254 the complaint but not created by the local department, including autopsy or medical or forensic records
255 or reports, are not available to the local department due to circumstances beyond the local department's
256 control shall not be computed as part of the total time period allowed for the investigation and
257 determination, and documentation of the circumstances that resulted in the delay shall be placed in the
258 record. In cases in which the subject of the investigation is a full-time, part-time, permanent, or
259 temporary employee of a school division who is suspected of abusing or neglecting a child in the course
260 of his educational employment, the time period for determining whether a report is founded or
261 unfounded and transmitting a report to that effect to the Department and the person who is the subject
262 of the investigation shall be mandatory, and every local department shall make the required
263 determination and report within the specified time period without delay;

264 6- 7. If a report of abuse or neglect is unfounded, transmit a report to such effect to the complainant
265 and parent or guardian and the person responsible for the care of the child in those cases where such
266 person was suspected of abuse or neglect;

267 7- 8. If a report of child abuse and neglect is founded, and the subject of the report is or was at the
268 time of the investigation or the conduct that led to the report a full-time, part-time, permanent, or
269 temporary employee of a school division located within the Commonwealth, notify the relevant school
270 board of the founded complaint without delay; and

271 8- 9. Upon request, disclose to the child's parent or guardian the location of the child, provided that
272 (i) the investigation has not been completed and a report has not been transmitted pursuant to
273 subdivision 5; (ii) the parent or guardian requesting disclosure of the child's location has not been the
274 subject of a founded report of child abuse or neglect; (iii) the parent or guardian requesting disclosure of
275 the child's location has legal custody of the child and provides to the local department any records or
276 other information necessary to verify such custody; (iv) the local department is not aware of any court
277 order, and has confirmed with the child's other parent or guardian or other person responsible for the
278 care of the child that no court order has been issued, that prohibits or limits contact by the parent or
279 guardian requesting disclosure of the child's location with the child, the child's other parent or guardian
280 or other person responsible for the care of the child, or any member of the household in which the child
281 is located; and (v) disclosure of the child's location to the parent or guardian will not compromise the
282 safety of the child, the child's other parent or guardian, or any other person responsible for the care of
283 the child.

284 If a local multidisciplinary team has determined that an interview of the child by a child advocacy
285 center recognized by the National Children's Alliance is needed and an interview with a recognized child
286 advocacy center within the jurisdiction cannot be completed within 14 days, the local department may
287 facilitate the interview with a recognized child advocacy center located in another jurisdiction.

288 Any information exchanged for the purposes of this subsection shall not be considered a violation of
289 § 63.2-102, 63.2-104, or 63.2-105.

290 C. Each local board may obtain and consider, in accordance with regulations adopted by the Board,
291 statewide criminal history record information from the Central Criminal Records Exchange and shall
292 obtain and consider results of a search of the child abuse and neglect central registry of any individual
293 who is the subject of a child abuse or neglect investigation conducted under this section when there is
294 evidence of child abuse or neglect and the local board is evaluating the safety of the home and whether
295 removal will protect a child from harm. The local board shall determine whether the individual has
296 resided in another state within at least the preceding five years and, if he has resided in another state,
297 the local board shall request a search of the child abuse and neglect registry or equivalent registry
298 maintained by such state. The local board also may obtain such a criminal records or registry search on
299 all adult household members residing in the home where the individual who is the subject of the
300 investigation resides and the child resides or visits. If a child abuse or neglect petition is filed in
301 connection with such removal, a court may admit such information as evidence. Where the individual

302 who is the subject of such information contests its accuracy through testimony under oath in hearing
303 before the court, no court shall receive or consider the contested criminal history record information
304 without certified copies of conviction. Further dissemination of the information provided to the local
305 board is prohibited, except as authorized by law.

306 D. A person who has not previously participated in the investigation of complaints of child abuse or
307 neglect in accordance with this chapter shall not participate in the investigation of any case involving a
308 complaint of alleged sexual abuse of a child unless he (i) has completed a Board-approved training
309 program for the investigation of complaints involving alleged sexual abuse of a child or (ii) is under the
310 direct supervision of a person who has completed a Board-approved training program for the
311 investigation of complaints involving alleged sexual abuse of a child. No individual may make a
312 determination of whether a case involving a complaint of alleged sexual abuse of a child is founded or
313 unfounded unless he has completed a Board-approved training program for the investigation of
314 complaints involving alleged sexual abuse of a child.

315 E. Any individual who is the subject of a child abuse or neglect investigation conducted under this
316 section shall notify the local department prior to changing his place of residence and provide the local
317 department with the address of his new residence.