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HOUSE BILL NO. 260

Offered January 18, 1994

A BILL to amend and reenact § 16.1-252 of the Code of Virginia, relating to preliminary removal orders; use of closed circuit television testimony.

Patrons—Deeds, Darner, Giesen and Jones, J.C.; Senators: Calhoun, Houck and Miller, Y.B.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-252 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-252. Preliminary removal order; hearing.

A. A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

B. Prior to the removal hearing, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is twelve years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child.

C. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf. *If the child is twelve years of age or under, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the Department of Social Services, the attorney for the local Department of Social Services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of §63.1-248.13:1 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least forty eight hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.*

E. In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irreparable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition; and

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

F. If the court determines that pursuant to subsection E hereof the removal of the child is proper, the court shall:

1. Order that the child be placed in the care and custody of a suitable person, with consideration being given to placement in the care and custody of a nearest kin, including grandparents, or personal friend or, if such placement is not available, in the care and custody of a suitable agency; and

2. Order that reasonable visitation be allowed between the child and his parents, guardian, legal custodian or other person standing in loco parentis, if such visitation would not endanger the child's life or health.

G. A person having legal custody of a child as defined in § 16.1-228 (i) shall not be required to

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60 comply with the requirements of this section in order to redetermine where and with whom the child
61 shall live, notwithstanding that the child had been placed with a natural parent.