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HOUSE BILL NO. 1252

Offered January 25, 1994

A *BILL to amend and reenact § 16.1-241 of the Code of Virginia as it is currently effective and as it may become effective, and § 20-107.2 of the Code of Virginia, relating to child custody; family abuse.*

Patron—Scott

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-241 of the Code of Virginia as it is currently effective and as it may become effective, and § 20-107.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-241. (For effective date - See note) Jurisdiction.

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;

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 § 63.1-56 or § 63.1-204 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;

6. Who is charged with a traffic infraction as defined in § 46.2-100.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members, *but it shall be rebuttably presumed that any party with a history of sexual, emotional or physical abuse directed at any child is not a party with a legitimate interest.* The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

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

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person

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60 standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown,
61 (iii) he cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give
62 such consent or provide such treatment when requested by the judge to do so.

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

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

66 1. Who has been abused or neglected;

67 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
68 or is otherwise before the court pursuant to subdivision A 4 of this section;

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

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

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

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

84 J. All offenses in which one family or household member is charged with an offense in which
85 another family or household member is the victim. In prosecution for felonies over which the court has
86 jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For
87 purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be
88 construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and
89 grandchild, regardless of whether such persons reside in the same home.

90 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
91 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such
92 parental rights. No such petition shall be accepted, however, after the child has been placed in the home
93 of adoptive parents.

94 L. Any person who seeks spousal support after having separated from his spouse. A decision under
95 this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court.
96 A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

97 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
98 § 16.1-279.1.

99 N. Any person who escapes or remains away without proper authority from a residential care facility
100 in which he had been placed by the court or as a result of his commitment to the Virginia Department
101 of Youth and Family Services.

102 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

103 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
104 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
105 by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the
106 juvenile and domestic relations district court.

107 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

108 R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

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

111 § 16.1-241. (Delayed effective date - See notes) Jurisdiction.

112 The judges of the family court elected or appointed under this law shall be conservators of the peace
113 within the corporate limits of the cities and the boundaries of the counties for which they are
114 respectively chosen and within one mile beyond the limits of such cities and counties. Except as
115 hereinafter provided, each family court shall have, within the limits of the territory for which it is
116 created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county,
117 concurrent jurisdiction with the family court or courts of the adjoining city or county over all cases,
118 matters and proceedings involving:

119 A. The custody, visitation, support, control or disposition of a child:

120 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status
121 offender, or delinquent;

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;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 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;

6. Who is charged with a traffic infraction as defined in § 46.2-100.

The authority of the family court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members, *but it shall be rebuttably presumed that any party with a history of sexual, emotional or physical abuse directed at any child is not a party with a legitimate interest.* The authority of the family court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

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

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

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law pursuant to Chapter 5 (§ 20-61 et seq.) of Title 20.

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

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;

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

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 which 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.

H. Judicial consent to apply for 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 which 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. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily

183 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such
184 parental rights. No such petition shall be accepted, however, after the child has been placed in the home
185 of adoptive parents.

186 L. Any person who seeks spousal support after having separated from his spouse.

187 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
188 § 16.1-279.1.

189 N. Any person who escapes or remains away without proper authority from a residential care facility
190 in which he had been placed by the court or as a result of his commitment to the Virginia Department
191 of Youth and Family Services.

192 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

193 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
194 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
195 by a family court upon the filing of a certified copy of such order in the family court.

196 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

197 R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

198 S. Suits for divorce and for annulling or affirming marriage in accordance with Title 20.

199 T. Suits for separate maintenance.

200 U. Suits for equitable distribution based on a foreign decree in accordance with § 20-107.3.

201 V. Petitions for adoption.

202 W. Petitions for change of name when incident to suits for annulling or affirming marriage, divorce,
203 or adoption or when ancillary to any action within the jurisdiction of the family court.

204 X. Petitions regarding records of birth pursuant to Chapter 7 (§ 32.1-249 et seq.) of Title 32.1.

205 Y. Judicial review of school board actions pursuant to § 22.1-87 and of hearing officer decisions
206 pursuant to §§ 22.1-214 and 22.1-214.1.

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

209 § 20-107.2. Court may decree as to custody and support of minor children.

210 Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the
211 bond of matrimony or from bed and board, and upon decreeing that neither party is entitled to a
212 divorce, the court may make such further decree as it shall deem expedient concerning the custody,
213 visitation and support of the minor children of the parties, including an order that either party provide
214 health care coverage. In any case involving the custody or visitation of a child, the court may award
215 custody or visitation to any party with a legitimate interest therein, including but not limited to,
216 grandparents, stepparents, former stepparents, blood relatives and family members provided any such
217 party has intervened in the suit or is otherwise properly before the court. The term "legitimate interest"
218 shall be construed broadly to accommodate the best interests of the child, *but it shall be rebuttably*
219 *presumed that any party with a history of sexual, emotional or physical abuse directed at any child is*
220 *not a party with a legitimate interest.* The court may also order that support be paid for any child of the
221 parties and, if support is ordered, the court shall order that it will continue to be paid for any child who
222 is (i) a full-time high school student, (ii) not self-supporting and (iii) living in the home of the parent
223 seeking or receiving child support until such child reaches the age of nineteen or graduates from high
224 school, whichever first occurs. However, the court may confirm a stipulation or agreement of the parties
225 which extends a support obligation beyond when it would otherwise terminate as provided by law. The
226 court shall have no authority to decree support of children payable by the estate of a deceased party.

227 The court, in determining custody and visitation of minor children, shall consider the following:

228 1. The age and physical and mental condition of the child or children;

229 2. The age and physical and mental condition of each parent;

230 3. The relationship existing between each parent and each child;

231 4. The needs of the child or children;

232 5. The role which each parent has played, and will play in the future, in the upbringing and care of
233 the child or children;

234 6. The propensity of each parent to allow the child contact with the other parent and the relative
235 willingness and demonstrated ability of each parent to maintain a close and continuing relationship with
236 the child;

237 7. The reasonable preference of the child, if the court deems the child to be of reasonable
238 intelligence, understanding, age and experience to express such a preference;

239 8. Any history of family abuse as defined in § 16.1-228; and

240 9. Such other factors considered by the court to be relevant to the best interests of the child.

241 In awarding the custody of the child or children, the court may give consideration to joint custody or
242 to sole custody, but shall give primary consideration to the welfare of the child or children, and, as
243 between the parents, there shall be no presumption or inference of law in favor of either.

244 For the purposes of this section, "joint custody" means (i) joint legal custody where both parents

245 retain joint responsibility for the care and control of the child and joint authority to make decisions
246 concerning the child even though the child's primary residence may be with only one parent, (ii) joint
247 physical custody where both parents share physical and custodial care of the child or (iii) any
248 combination of joint legal and joint physical custody which the court deems to be in the best interest of
249 the child.

250 In any proceeding involving custody or visitation, the court shall include as a condition of any
251 custody or visitation order a requirement that thirty days' advance written notice be given to the court
252 and the other party by any party intending to relocate and of any intended change of address, unless the
253 court, for good cause shown, orders otherwise. The court may require that the notice be in such form
254 and contain such information as it deems proper and necessary under the circumstances of the case.

255 Notwithstanding any other provision of law, neither parent shall be denied access to the academic,
256 medical, hospital or other health records of that parent's minor child unless otherwise ordered by the
257 court for good cause shown.