

LD4449324

HOUSE BILL NO. 1420

Offered January 11, 1995

Prefiled October 28, 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 to amend the Code of Virginia by adding sections numbered 18.2-75.1, 18.2-75.2 and 18.2-75.3, relating to procedures governing abortions for minors; penalty.

Patron—Marshall

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, is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-75.1, 18.2-75.2 and 18.2-75.3 as follows:

§ 16.1-241. 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. 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

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

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

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

67 1. Who has been abused or neglected;

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

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

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

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

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

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

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

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

98 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
99 § 16.1-279.1.

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

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

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

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

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

110 S. *Petitions for obtaining authorization for a physician to perform an abortion pursuant to*
111 *§ 18.2-75.2.*

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

114 § 16.1-241. (Delayed effective date) Jurisdiction.

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

122 A. The custody, visitation, support, control or disposition of a child:
123 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status
124 offender, or delinquent;
125 2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical
126 or mental incapacity of his parents is without parental care and guardianship;
127 2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated
128 as having abused or neglected another child in the care of the parent or custodian;
129 3. Whose custody, visitation or support is a subject of controversy or requires determination;
130 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
131 or whose parent or parents for good cause desire to be relieved of his care and custody;
132 5. Where the termination of residual parental rights and responsibilities is sought;
133 6. Who is charged with a traffic infraction as defined in § 46.2-100.
134 The authority of the family court to adjudicate matters involving the custody, visitation, support,
135 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
136 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
137 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
138 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The
139 authority of the family court to consider a petition involving the custody of a child shall not be
140 proscribed or limited where the child has previously been awarded to the custody of a local board of
141 social services.

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

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

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

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

160 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:
161 1. Who has been abused or neglected;
162 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
163 or is otherwise before the court pursuant to subdivision A 4 of this section;
164 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
165 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
166 conduct of the child complained of in the petition.

167 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other
168 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services
169 which are required by law to be provided for that child or such child's parent, guardian, legal custodian
170 or other person standing in loco parentis.

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

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

178 J. All offenses in which one family or household member is charged with an offense in which
179 another family or household member is the victim. In prosecution for felonies over which the court has
180 jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For
181 purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be
182 construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and

183 grandchild, regardless of whether such persons reside in the same home.

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

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

189 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
190 § 16.1-279.1.

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

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

195 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
196 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
197 by a family court upon the filing of a certified copy of such order in the family court.

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

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

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

201 T. Suits for separate maintenance.

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

203 V. Petitions for adoption.

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

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

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

209 Z. *Petitions for obtaining authorization for a physician to perform an abortion pursuant to*
210 *§ 18.2-75.2.*

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

213 *§ 18.2-75.1. Minors; abortion requirements and procedure; penalty.*

214 A. *No physician shall knowingly perform an abortion, induce any miscarriage or terminate any*
215 *pregnancy as provided in § 18.2-72, § 18.2-73, or § 18.2-74, including the performance of menstrual*
216 *regulation for the purpose of confirming a nonpregnancy, upon an unemancipated minor under the age*
217 *of eighteen years unless:*

218 *1. The physician or his agent has given directly to a parent, person standing in loco parentis with*
219 *whom the minor resides on a regular basis and under such person's care and control in the absence of*
220 *the minor's parent or parents and with the consent of such parent or parents, or other lawfully*
221 *appointed custodian of the minor, either in person or by telephone, at least twenty-four hours' actual*
222 *notice of his intention to perform such abortion, and the physician has secured the informed, written*
223 *consent of the minor;*

224 *2. After a reasonable effort to notify the parent or other person as required by subdivision 1, (i) the*
225 *physician or his agent has mailed notice to one parent or such other person by certified mail addressed*
226 *to the parent or other person at his usual place of abode, with return receipt requested, (ii) seventy-two*
227 *hours have elapsed since such mailing, and (iii) the physician has secured the informed written consent*
228 *of the minor;*

229 *3. At least one person who is entitled to notice under subdivision 1 is present with the minor seeking*
230 *the abortion, and the physician has secured the informed written consent of the minor; or*

231 *4. The abortion is authorized in a notarized writing by at least one person who is entitled to notice*
232 *under subdivision 1, the authorization is delivered to the physician prior to the abortion, and the*
233 *physician has secured the informed written consent of the minor.*

234 *In the event a male who is a minor (i) acknowledges paternity of the preborn child or (ii) is*
235 *identified by the minor female as being the father of the preborn child, the notice required in*
236 *subdivisions 1 and 2 shall also be given by the physician or his agent to one of the putative father's*
237 *parents or other person as provided in such subdivisions.*

238 *For purposes of this section, a minor shall be emancipated if: (i) the minor has entered into a valid*
239 *marriage, whether or not that marriage has been terminated by dissolution; (ii) the minor is on active*
240 *duty with any of the armed forces of the United States of America; (iii) the minor willingly lives*
241 *separate and apart from his parents or guardian, with the consent or acquiescence of the parents or*
242 *guardian, and the minor is or is capable of supporting himself and competently managing his own*
243 *financial affairs or (iv) the minor has been judicially declared emancipated pursuant to Article 15*
244 *(§ 16.1-331 et seq.) of Chapter 11 of Title 16.1.*

245 For purposes of determining whether any person seeking an abortion has obtained the age of
246 majority, no abortion shall be performed under the provisions of this article until such person has
247 presented satisfactory proof of age to the physician requested to perform the abortion.

248 B. Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion, induces any
249 miscarriage or terminates any pregnancy upon an unmarried, unemancipated woman under the age of
250 eighteen years which would otherwise be lawful under the provisions of this article without complying
251 with the provisions of this section and § 18.2-75.2 shall be guilty of a Class 3 misdemeanor.

252 § 18.2-75.2. Minor's abortion; judicial procedure in lieu of notification.

253 If an unmarried, unemancipated minor elects not to allow the notification of one of her parents or
254 other person as provided in § 18.2-75.1, upon petition as provided in § 16.1-241 and after hearing, a
255 judge may authorize a physician to perform the abortion if the judge determines that all persons entitled
256 to notice under § 18.2-75.1 have abused or neglected the minor.

257 The minor may participate in the court proceedings on her own behalf, and the court may appoint a
258 guardian ad litem for her. The court shall advise her that she has a right to counsel and shall, upon her
259 request, appoint counsel for her.

260 Court proceedings under this section shall be confidential and shall be given precedence over other
261 pending matters so that the court may reach a decision promptly and without delay in order to serve the
262 minor's best interests. Court proceedings under this section shall be heard as soon as practicable, but in
263 no event later than five business days after the petition is filed.

264 An expedited confidential appeal shall be available to any minor for whom the court denies an order
265 authorizing an abortion without notification. Any such appeal must be heard and decided no later than
266 five business days after the appeal is filed. An order authorizing an abortion without notification shall
267 not be subject to appeal, except by the guardian ad litem.

268 No filing fees shall be required of the minor at either the trial or appellate level.

269 For purposes of establishing a statistical record of the number of abortions authorized under this
270 section, the clerk of the appropriate court shall send written notification to the Virginia Department of
271 Health each time an abortion is authorized pursuant to this section, together with the name of the judge
272 who entered the order authorizing the abortion. The Department of Health shall maintain this record
273 which shall be made available to any member of the General Assembly upon request.

274 § 18.2-75.3. When notification or judicial approval not required.

275 The provisions of § 18.2-75.1 shall not apply when the attending physician certifies in the minor's
276 medical record that, in his good faith medical judgment, medical intervention is necessary immediately
277 to preserve the minor's life or the life of her unborn child. Written notice shall be given to the person
278 entitled to notice pursuant to § 18.2-75.1 by the attending physician as soon as practicable, but no later
279 than ten days after the medical emergency, to ensure that the person entitled to notice may fulfill any
280 obligation to secure and provide for medical care for the minor.