

LD1313443

HOUSE BILL NO. 2006

Offered January 20, 1995

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 § 20-124.1 of the Code of Virginia, relating to child custody; family abuse.*

Patrons—Scott, Behm, Cooper, Cunningham, Diamonstein, Fisher, Grayson, Hull, Keating, Mims, Plum, Puller and Rhodes; Senators: Calhoun and Howell

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 § 20-124.1 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, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6;

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 convicted of an offense involving sexual, emotional or physical abuse directed at any child is not a party with a legitimate interest.* A party with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily terminated by court order if the child subsequently has been legally adopted, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. 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

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HB2006

60 require parental consent may be given for a child who has been separated from his parents, guardian,
61 legal custodian or other person standing in loco parentis and is in the custody of the court when such
62 consent is required by law.

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

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

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

72 1. Who has been abused or neglected;

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

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

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

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

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

90 J. All offenses in which one family or household member is charged with an offense in which
91 another family or household member is the victim and all offenses under § 18.2-49.1.

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

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

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

104 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
105 § 16.1-279.1.

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

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

110 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
111 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
112 by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the
113 juvenile and domestic relations district court.

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

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

116 S. Petitions filed by school boards against a parent pursuant to § 16.1-241.2.

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

119 § 16.1-241. (Delayed effective date - See notes) Jurisdiction.

120 The judges of the family court elected or appointed under this law shall be conservators of the peace
121 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 family 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 family 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, except where the jurisdiction of the family court has been terminated under the provisions of § 16.1-269.6;

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 convicted of an offense involving sexual, emotional or physical abuse directed at any child is not a party with a legitimate interest.* A party with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily terminated by court order if the child subsequently has been legally adopted, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. 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

183 parents, legal guardian or other person standing in loco parentis.

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

189 J. All offenses in which one family or household member is charged with an offense in which
190 another family or household member is the victim and all offenses under § 18.2-49.1.

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

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

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

201 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
202 § 16.1-279.1.

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

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

207 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
208 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
209 by a family court upon the filing of a certified copy of such order in the family court.

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

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

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

213 T. Suits for separate maintenance.

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

215 V. Petitions for adoption.

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

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

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

221 Z. Petitions filed by school boards against a parent pursuant to § 16.1-241.2.

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

224 § 20-124.1. Definitions.

225 As used in this chapter:

226 "Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the
227 care and control of the child and joint authority to make decisions concerning the child even though the
228 child's primary residence may be with only one parent, (ii) joint physical custody where both parents
229 share physical and custodial care of the child or (iii) any combination of joint legal and joint physical
230 custody which the court deems to be in the best interest of the child.

231 "Person with a legitimate interest" shall be broadly construed and includes, but is not limited to
232 grandparents, stepparents, former stepparents, blood relatives and family members provided any such
233 party has intervened in the suit or is otherwise properly before the court. The term shall be broadly
234 construed to accommodate the best interest of the child, *but it shall be rebuttably presumed that any*
235 *party convicted of an offense involving sexual, emotional or physical abuse directed at any child is not*
236 *a party with a legitimate interest.* A party with a legitimate interest shall not include any person (i)
237 whose parental rights have been involuntarily terminated by court order if the child subsequently has
238 been legally adopted, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or
239 subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result
240 of such violation.

241 "Sole custody" means that one person retains responsibility for the care and control of a child and
242 has primary authority to make decisions concerning the child.