

LD3408344

## HOUSE BILL NO. 465

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 11, 1994)

(Patron Prior to Substitute—Delegate Mayer)

*A BILL to amend and reenact §§ 16.1-241, as it is currently effective and as it will become effective, and 63.1-248.6:1 of the Code of Virginia, relating to administrative appeals of child protective services dispositions; jurisdiction.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-241, as it is currently effective and as it will become effective, and 63.1-248.6:1 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;

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 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) he 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.

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

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

63 1. Who has been abused or neglected;

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

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

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

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

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

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

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

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

94 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or  
95 § 16.1-279.1.

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

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

100 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13  
101 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered  
102 by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the  
103 juvenile and domestic relations district court.

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

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

106 *S. Petitions to compel the production of documents of the State Department of Social Services or to*  
107 *compel witnesses to attend hearings and present evidence pursuant to subsection D of § 63.1-248.6:1.*

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

110 § 16.1-241. (Delayed effective date - See notes) Jurisdiction.

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

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

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

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

183 of adoptive parents.

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

185 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or  
186 § 16.1-279.1.

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

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

191 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13  
192 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered  
193 by a family court upon the filing of a certified copy of such order in the family court.

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

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

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

197 T. Suits for separate maintenance.

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

199 V. Petitions for adoption.

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

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

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

205 *Z. Petitions to compel the production of documents of the State Department of Social Services or to*  
206 *compel witnesses to attend hearings and present evidence pursuant to subsection D of § 63.1-248.6:1.*

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 § 63.1-248.6:1. Appeals of certain actions of local departments.

210 A. A person who is suspected of or is found to have committed abuse or neglect may, within thirty  
211 days of being notified of that determination, request the local department rendering such determination  
212 to amend the determination and the local department's related records. The local department shall hold  
213 an informal conference or consultation in order for such person to informally present factual data,  
214 arguments or submissions of proof to the local department. If the local department refuses the request  
215 for amendment or fails to act within forty-five days after receiving such request, the person may, within  
216 thirty days thereafter, petition the Commissioner, who shall grant a hearing to determine whether it  
217 appears, by a preponderance of the evidence that the determination or record contains information which  
218 is irrelevant or inaccurate regarding the commission of abuse or neglect by the person who is the subject  
219 of the determination or record and therefore shall be amended. A person who is the subject of a report  
220 who requests an amendment to the record, as provided above, has the right to obtain an extension for an  
221 additional specified period of up to sixty days by requesting in writing that the forty-five days in which  
222 the local department must act be extended. The extension period, which may be up to sixty days, shall  
223 begin at the end of the forty-five days in which the local department must act. When there is an  
224 extension period, the thirty-day period to request an administrative hearing shall begin on the  
225 termination of the extension period.

226 B. The Commissioner shall designate and authorize one or more members of his staff to conduct  
227 such hearings. The decision of any staff member so designated and authorized shall have the same force  
228 and effect as if the Commissioner had made the decision. The State Board of Social Services shall  
229 promulgate regulations necessary for the conduct of such hearings. Such hearing officers are empowered  
230 to order the amendment of such determination or records as is required to make them accurate and  
231 consistent with the requirements of this chapter or the regulations promulgated hereunder. If, after  
232 hearing the facts of the case, the hearing officer determines that the person who is the subject of the  
233 report has presented information that was not available to the local department at the time of the local  
234 conference and which if available may have resulted in a different determination by the local  
235 department, he may remand the case to the local department for reconsideration. The local department  
236 shall have fourteen days in which to reconsider the case. If, at the expiration of fourteen days, the local  
237 department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be  
238 returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer,  
239 such person may obtain further review of the decision in accordance with Article 4 (§ 9-6.14:15 et seq.)  
240 of the Administrative Process Act.

241 C. Whenever such an appeal is made and a criminal charge is also filed against the appellant for the  
242 same conduct involving the same victim as investigated by the local department, the appeal process shall  
243 automatically be stayed until the criminal prosecution in circuit court is completed. During such stay, the  
244 appellant's right of access to the records of the local department regarding the matter being appealed

245 shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local  
246 department shall advise the appellant in writing of his right to resume his appeal within the time frames  
247 provided by law and regulation.

248 *D. Any party to an appeal under this section shall have the right to petition the juvenile and*  
249 *domestic relations court or family court, whichever is appropriate, to compel the production of*  
250 *documents of the Department relating to the case or to compel witnesses to attend the hearing and*  
251 *present evidence. The court shall grant the petition upon good cause shown and compel the production*  
252 *of such documents or the attendance of such witnesses.*