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HOUSE BILL NO. 465**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the Senate Committee on Rehabilitation and Social Services
on December 15, 1994)

(Patron Prior to Substitute—Delegate Mayer)

A BILL to amend and reenact §§ 16.1-241, as it is currently effective and as it may become effective, and 63.1-248.6:1 of the Code of Virginia, relating to 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 may 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, 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. 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 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

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 and all offenses under § 18.2-49.1.

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

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

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

99 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
100 § 16.1-279.1.

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

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

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

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

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

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

112 *T. Petitions filed to appeal the decision of a hearing officer of the State Department of Social*
113 *Services regarding child abuse and neglect pursuant to § 63.1-248.6:1.*

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

116 § 16.1-241. (Delayed effective date - See notes) Jurisdiction.

117 The judges of the family court elected or appointed under this law shall be conservators of the peace
118 within the corporate limits of the cities and the boundaries of the counties for which they are
119 respectively chosen and within one mile beyond the limits of such cities and counties. Except as
120 hereinafter provided, each family court shall have, within the limits of the territory for which it is
121 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. 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 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

183 there is probable cause.

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

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

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

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

196 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
197 § 16.1-279.1.

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

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

202 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
203 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
204 by a family court upon the filing of a certified copy of such order in the family court.

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

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

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

208 T. Suits for separate maintenance.

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

210 V. Petitions for adoption.

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

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

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

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

217 AA. *Petitions filed to appeal the decision of a hearing officer of the State Department of Social*
218 *Services regarding child abuse and neglect pursuant to § 63.1-248.6:1.*

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

221 § 63.1-248.6:1. Appeals of certain actions of local departments.

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

238 B. The Commissioner shall designate and authorize one or more members of his staff to conduct
239 such hearings. The decision of any staff member so designated and authorized shall have the same force
240 and effect as if the Commissioner had made the decision. The State Board of Social Services shall
241 promulgate regulations necessary for the conduct of such hearings. Such hearing officers are empowered
242 to order the amendment of such determination or records as is required to make them accurate and
243 consistent with the requirements of this chapter or the regulations promulgated hereunder. If, after
244 hearing the facts of the case, the hearing officer determines that the person who is the subject of the

report has presented information that was not available to the local department at the time of the local conference and which if available may have resulted in a different determination by the local department, he may remand the case to the local department for reconsideration. The local department shall have fourteen days in which to reconsider the case. If, at the expiration of fourteen days, the local department fails to act or fails to amend the record to the satisfaction of the appellant, the case shall be returned to the hearing officer for a determination. If aggrieved by the decision of the hearing officer, such person may obtain further review of the decision in accordance with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act file a petition with the juvenile and domestic relations district court or family court, whichever is appropriate, within thirty days of the date the hearing officer's decision is rendered or, if the hearing officer fails to render a decision, within thirty days of the date the decision was supposed to be rendered, for a trial de novo to determine, by a preponderance of the evidence, whether the disposition being appealed is valid. The court shall appoint a guardian ad litem for any alleged child victim of the appellant in the case before the court. Alleged child victims of the appellant shall not testify, be deposed or subpoenaed without leave of court for good cause shown. Any appeal from the juvenile and domestic relations district court to the circuit court pursuant to this section shall be limited to a review of the record only.

C. Whenever such an appeal of the local department's finding is made and a criminal charge is also filed against the appellant for the same conduct involving the same victim as investigated by the local department, the appeal process shall automatically be stayed until the criminal prosecution in circuit court is completed. During such stay, the appellant's right of access to the records of the local department regarding the matter being appealed shall also be stayed. Once the criminal prosecution in circuit court has been completed, the local department shall advise the appellant in writing of his right to resume his appeal within the time frames provided by law and regulation.