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SENATE BILL NO. 358

Offered January 22, 1996

A BILL to amend and reenact §§ 16.1-241, 16.1-244, 16.1-296, 17-116.05 and 20-79 of the Code of Virginia, as they are currently effective, relating to jurisdiction over child custody matters.

Patron—Norment

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 16.1-244, 16.1-296, 17-116.05 and 20-79 of the Code of Virginia, as they are currently effective, are amended and reenacted 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, 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, *and no matter involving custody of a child which is filed in the juvenile and domestic relations district court shall be transferred to a court having equity jurisdiction unless a party requests such transfer within twenty-one days of notice from the court that proceedings will be held in the juvenile court with a right of appeal to the Court of Appeals;*

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,

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60 legal custodian or other person standing in loco parentis and is in the custody of the court when such
61 consent is required by law.

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

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

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

71 1. Who has been abused or neglected;

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

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

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

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

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

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

91 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
92 determining whether or not there is probable cause. Any objection based on jurisdiction under this
93 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
94 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it
95 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for
96 challenging directly or collaterally the jurisdiction of the court in which the case is tried. For purposes
97 of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to
98 include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild,
99 regardless of whether such persons reside in the same home.

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

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

107 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
108 § 16.1-279.1.

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

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

113 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
114 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
115 by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the
116 juvenile and domestic relations district court.

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

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

119 S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

120 T. Petitions to enforce any request for information or subpoena that is not complied with or to
121 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect

pursuant to § 63.1-248.6:1.

U. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

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

Notwithstanding any other provision of law no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A or subsections M or R of this section.

§ 16.1-244. Concurrent jurisdiction; exceptions.

A. Nothing contained in this law shall deprive any other court of the concurrent jurisdiction to determine the custody of children upon a writ of habeas corpus under the law, or to determine the custody, guardianship, visitation or support of children when such custody, guardianship, visitation or support is incidental to the determination of causes pending in such courts, nor deprive a circuit court of jurisdiction to determine spousal support in a suit for separate maintenance. However, when a suit for divorce has been filed in a circuit court, in which the custody, guardianship, visitation or support of children of the parties or spousal support is raised by the pleadings and a hearing is set by the circuit court on any such issue for a date certain to be heard within twenty-one days of the filing, the juvenile and domestic relations district courts shall be divested of the right to enter any further decrees or orders; such matters shall be determined by the circuit court unless both parties agreed to a referral to the juvenile court. *In any other case in which the issue of custody of a minor child is properly before a circuit court, the juvenile and domestic relations district court shall be divested of jurisdiction.*

Upon a showing of need to continue any preliminary protective order issued by the juvenile and domestic relations district court, the circuit court shall grant a hearing to the parties as a preferential matter on the court docket. Nothing in this section shall deprive a circuit court of the authority to refer any such case to a commissioner for a hearing or shall deprive the juvenile and domestic relations district courts of the jurisdiction to enforce its valid orders prior to the entry of a conflicting order of any circuit court for any period during which the order was in effect or to temporarily place a child in the custody of any person when that child has been adjudicated abused, neglected, in need of services or delinquent subsequent to the order of any circuit court.

B. Jurisdiction of cases involving violations of federal law by a child shall be concurrent and shall be assumed only if waived by the federal court or the United States attorney.

§ 16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within thirty days from entry of a final order or judgment. An order of protection issued pursuant to § 16.1-279.1 in a case of spouse abuse is a final order from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or § 16.1-273.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the perfecting of the appeal.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in

183 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

184 F. In all other cases on appeal, *other than cases involving the custody of a minor child which shall*
185 *be appealed to the Court of Appeals*, proceedings in the circuit court shall conform to the equity
186 practice where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the
187 discretion of the judge, upon the motion of any party. An appeal from an order of protection issued
188 pursuant to § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals
189 taken to the circuit court from the district courts, but shall otherwise be docketed and processed as other
190 civil cases.

191 G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee
192 could have been assessed in the juvenile and domestic relations court and shall be collected in the
193 circuit court *or Court of Appeals*.

194 H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic
195 relations district court except for that portion of any order or judgment establishing a support arrearage
196 or suspending payment of support during pendency of an appeal. In cases involving support, no appeal
197 shall be allowed unless and until the party applying for the same or someone for him shall give bond, in
198 an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by
199 such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to
200 satisfy the judgment of the court in which it was rendered. An appeal will not be perfected unless such
201 appeal bond as may be required is filed within thirty days from the entry of the final judgment or order.
202 However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect
203 the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or
204 town.

205 If bond is furnished by or on behalf of any party against whom judgment has been rendered for
206 money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as
207 may be entered against the party on appeal, and for the payment of all damages which may be awarded
208 against him in the appellate court. If the appeal is by a party against whom there is no recovery, the
209 bond shall be conditioned for the payment of any damages as may be awarded against him on the
210 appeal.

211 This subsection shall not apply to release on bail pursuant to other subsections of this section or
212 § 16.1-298.

213 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
214 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
215 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
216 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
217 (§ 16.1-266 et seq.) of this chapter.

218 J. In any case, *other than a child custody case*, which has been referred or transferred from a circuit
219 court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the
220 appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had
221 been referred or transferred.

222 § 17-116.05. Appellate jurisdiction - Administrative agency, Virginia Workers' Compensation
223 Commission, and domestic relations appeals.

224 Any aggrieved party may appeal to the Court of Appeals from:

- 225 1. Any final decision of a circuit court on appeal from a decision of an administrative agency;
- 226 2. Any final decision of the Virginia Workers' Compensation Commission;
- 227 3. Any final judgment, order, or decree of a circuit court involving:
 - 228 a. Affirmance or annulment of a marriage;
 - 229 b. Divorce;
 - 230 c. ~~Custody~~;
 - 231 d. Spousal or child support;
 - 232 e. The control or disposition of a child;
 - 233 f. Any other domestic relations matter arising under Title 16.1 or Title 20; or
 - 234 g. Adoption under Chapter 11 (§ 63.1-220 et seq.) of Title 63.1;
- 235 4. Any interlocutory decree or order entered in any of the cases listed in this section (i) granting,
236 dissolving, or denying an injunction or (ii) adjudicating the principles of a cause; ~~or~~ ; or
- 237 5. *Any final judgment, order, or decree of a circuit court or Juvenile and Domestic Relations District*
238 *Court involving custody.*

239 § 20-79. Effect of divorce proceedings.

240 (a) In any case where an order has been entered under the provisions of this chapter, directing either
241 party to pay any sum or sums of money for the support of his or her spouse, or concerning the care,
242 custody or maintenance of any child, or children, ~~the jurisdiction of the court which entered such order~~
243 ~~shall cease and its such~~ orders become inoperative upon the entry of a decree by the court ~~or the judge~~
244 ~~thereof in vacation~~ in a suit for divorce instituted in any circuit court in this Commonwealth having

jurisdiction thereof, in which decree provision is made for support and maintenance for the spouse or concerning the care, custody or maintenance of a child or children, or concerning any matter provided in a decree in the divorce proceedings in accordance with the provisions of § 20-103.

(b) In any suit for divorce, the court in which the suit is instituted or pending, when either party to the proceedings so requests, shall provide in its decree for the maintenance, support, care or custody of the child or children in accordance with Chapter 6.1 (§ 20-124.1 et seq.), support and maintenance for the spouse, if the same be sought, and counsel fees and other costs, if in the judgment of the court any or all of the foregoing should be so decreed.

(c) In any suit for divorce or suit for maintenance and support, the court may after a hearing, pendente lite, or in any decree of divorce a mensa et thoro, decree of divorce a vinculo matrimonii, final decree for maintenance and support, or subsequent decree in such suit, transfer to the juvenile and domestic relations district court the enforcement of its orders pertaining to support and maintenance for the spouse, ~~maintenance, support, care and custody of the child or children~~ *but no such transfer shall occur if the order pertains to the care and custody of a child or children*. After the entry of a decree of divorce a vinculo matrimonii the court may transfer to the juvenile and domestic relations district court any other matters pertaining to support and maintenance for the spouse, ~~maintenance, support, care and custody of the child or children on motion by either party~~, and may so transfer such matters before the entry of such decree on motion joined in by both parties. In the transfer of any matters referred to herein, the court may, upon the motion of any party, or on its own motion, and for good cause shown, transfer any matters covered by said decree or decrees to any juvenile and domestic relations district court within the Commonwealth that constitutes a more appropriate forum. An appeal of an order by such juvenile and domestic relations district court which is to enforce or modify the decree in the divorce suit shall be as provided in § 16.1-296.