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SENATE BILL NO. 636

Offered March 5, 1996

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 abortions for minors; penalty.

Patron—Earley

Introduced at the request of Governor

Referred to the Committee on Education and Health

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 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

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

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

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

108 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
109 § 16.1-279.1.

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

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

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

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

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

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

121 T. Petitions to enforce any request for information or subpoena that is not complied with or to

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.

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

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.

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

The judges of the family 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 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. 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.

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

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

186 1. Who has been abused or neglected;

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

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

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

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

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

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

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

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

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

219 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
220 § 16.1-279.1.

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

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

225 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
226 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
227 by a family court upon the filing of a certified copy of such order in the family court.

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

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

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

231 T. Suits for separate maintenance.

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

233 V. Petitions for adoption.

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

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

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

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

240 AA. Petitions to enforce any request for information or subpoena that is not complied with or to
241 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect
242 pursuant to § 63.1-248.6:1.

243 BB. Petitions filed in connection with parental placement adoption consent hearings, pursuant to
244 § 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.

CC. Petitions for obtaining authorization for a physician to perform an abortion pursuant to § 18.2-75.2.

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.

§ 18.2-75.1. Minor's abortion; requirements and procedures; penalty.

For purposes of this section and § 18.2-75.2:

A. "Authorized person" means: (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling, with whom the minor regularly and customarily resides and who has care and control of the minor.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in §§ 18.2-73, 18.2-74 or §18.2-74.1.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the armed forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 § 16.1-331 et seq. of Chapter 11 of Title 16.1.

B. A physician shall not knowingly perform an abortion upon an unemancipated minor unless:

1. The physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least twenty-four hours previous to the performance of the abortion; or

2. The physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least seventy-two hours prior to the performance of the abortion; or

3. At least one authorized person is present with the minor seeking the abortion; or

4. The minor has delivered to the physician a written statement signed by an authorized person and witnessed by a competent adult that the authorized person knows of the minor's intent to have an abortion; or

5. The minor has delivered to the physician a copy of a court order entered pursuant to § 18.2-75.2 authorizing the abortion.

C. Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of this section shall be guilty of a Class 3 misdemeanor.

§ 18.2-75.2. Judicial procedure in lieu of notification of minor's abortion.

If an unemancipated minor elects not to allow notification of an authorized person as provided in § 18.2-75.1, the minor may petition a court of competent jurisdiction in accordance with § 16.1-241 to obtain authorization for a physician to perform an abortion.

After a hearing, a judge may authorize a physician to perform an abortion upon finding that the minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the minor is not mature, the judge shall, after a hearing, determine whether the performance of an abortion upon the minor without notification of an authorized person would be in the minor's best interest, and if the court finds that the abortion would be in the minor's best interest, it shall so authorize a physician.

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

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

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without notification. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order authorizing an abortion without notification shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this section, the court before which the proceeding is pending shall immediately authorize a physician to

306 *perform the abortion without notification to an authorized person.*

307 *§ 18.2-75.3. When notification or judicial approval not required.*

308 *The provisions of § 18.2-75.1 shall not apply:*

309 *1. If the minor declares that she is abused or neglected and the attending physician has reason to*
310 *suspect that the minor may be an abused or neglected child as defined in § 63.1-248.2 and reports the*
311 *suspected abuse or neglect in accordance with § 63.1-248.3; or*

312 *2. If, in the attending physician's good faith medical judgment, (i) the abortion is medically*
313 *necessary immediately to avert the minor's death or (ii) there is insufficient time to provide the required*
314 *notice or judicial authorization because a delay would create a serious risk of substantial impairment of*
315 *a major bodily function or substantial physical injury. The attending physician shall certify in the*
316 *minor's medical record as to any determinations under this subdivision.*