

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 441

An Act to amend and reenact § 16.1-263 of the Code of Virginia, as it is currently effective and as it may become effective, relating to notice to parent of juvenile offender.

[S 1121]

Approved March 16, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-263 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

§ 16.1-263. Summonses.

A. After a petition has been filed, the court shall direct the issuance of summonses, one directed to the juvenile, if the juvenile is twelve or more years of age, and another to the parents, guardian, legal custodian or other person standing in loco parentis, and such other persons as appear to the court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned and such person is not the parent of the juvenile in question, the parent shall also be served with a summons. The court may direct that other proper or necessary parties to the proceedings be notified of the pendency of the case, the charge and the time and place for the hearing.

B. The summons shall advise the parties of their right to counsel as provided in § 16.1-266. A copy of the petition shall accompany each summons for the initial proceedings. The summons shall include notice that in the event that the juvenile is committed to the Department or to a secure local facility, the parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for support and treatment of the juvenile pursuant to § 16.1-290. Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has notified the court that he no longer represents such party.

C. The judge may endorse upon the summons an order directing the parents, guardian or other custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

D. A party, other than the juvenile, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

E. No such summons or notification shall be required if the judge shall certify on the record that (i) the identity of a parent or guardian is not reasonably ascertainable or (ii) *in cases in which it is alleged that a juvenile has committed a delinquent act, crime, status offense or traffic infraction or is in need of services or supervision, the location, or in the case of a parent or guardian located outside of the Commonwealth the location or mailing address, of a parent or guardian is not reasonably ascertainable.* An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. *In cases referred to in clause (ii), an affidavit of a law-enforcement officer or juvenile probation officer that the location of a parent or guardian is not reasonably ascertainable shall be sufficient evidence of this fact, provided that there is no other evidence before the court which would refute the affidavit.*

§ 16.1-263. (Delayed effective date) Process.

A. After a petition has been filed, the court shall direct the issuance of summonses, one directed to the juvenile, if the juvenile is twelve or more years of age, and another to the parents, guardian, legal custodian or other person standing in loco parentis, and such other persons as appear to the court to be proper or necessary parties to the proceedings. The summons shall require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned and such person is not the parent of the juvenile in question, the parent shall also be served with a summons. The court may direct that other proper or necessary parties to the proceedings be notified of the pendency of the case, the charge and the time and place for the hearing.

B. The summons shall advise the parties of their right to counsel as provided in § 16.1-266. The summons shall include notice that in the event that the juvenile is committed to the Department or to a secure local facility, the parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for support and treatment of the juvenile pursuant to § 16.1-290. A copy of the petition shall accompany each summons for the initial proceedings. Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has

notified the court that he no longer represents such party.

C. The judge may endorse upon the summons an order directing the parents, guardian or other custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

D. A party, other than the juvenile, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

E. No such summons or notification shall be required if the judge shall certify on the record that *(i) the identity of a parent or guardian is not reasonably ascertainable or (ii) in cases in which it is alleged that a juvenile has committed a delinquent act, crime, status offense or traffic infraction or is in need of services or supervision, the location, or in the case of a parent or guardian located outside of the Commonwealth the location or mailing address, of a parent or guardian is not reasonably ascertainable.* An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. *In cases referred to in clause (ii), an affidavit of a law-enforcement officer or juvenile probation officer that the location of a parent or guardian is not reasonably ascertainable shall be sufficient evidence of this fact, provided that there is no other evidence before the court which would refute the affidavit.*

F. For all cases of divorce, annulment or affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, adoption, change of name, amendment of a record of birth, and judicial review of school board actions and of hearing officer decisions, process shall be governed by the Rules of the Supreme Court or statute, as appropriate.