

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 654

An Act to amend and reenact § 16.1-296 of the Code of Virginia, as it is currently effective and as it may become effective, relating to child and spousal support; appeal bonds.

[S 1060]

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-296 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

§ 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. A protective order issued pursuant to § 16.1-279.1 in a case of family 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 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

F. In all other cases on appeal, proceedings in the circuit court shall conform to the equity practice where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court.

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. *Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal.* An appeal will not be perfected unless such appeal bond as may be required is filed within thirty days from the entry of the final judgment or order. However, no appeal bond shall be required of the

Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

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

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

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

J. In any case which has been referred or transferred from a circuit court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had been referred or transferred.

§ 16.1-296. (Delayed effective date) Appeals to circuit court.

A. From any final order, judgment or conviction of the family court, an appeal may be taken to the circuit court within ten days from the entry of the final order, judgment or conviction in a case:

1. Involving an adult convicted of a violation of the criminal laws pursuant to subdivisions E, I, or J of § 16.1-241;
2. Involving a juvenile found to be delinquent or found guilty of a traffic infraction;
3. Involving a juvenile found to be in need of services, in need of supervision, or to be a status offender;
4. Involving a conviction pursuant to § 16.1-278 or a finding of criminal contempt;
5. Arising pursuant to subdivision B of § 16.1-241 involving persons alleged to be mentally ill or mentally retarded; provided, however, the applicable period for the appeal of mental commitment orders shall be as specified in §§ 16.1-344 and 37.1-67.6.

Upon receipt of notice of such appeal the family 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 family court.

B. 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.

C. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the family 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 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

D. In all cases other than those specified in subsections B and C on appeal to the circuit court, proceedings in the circuit court shall conform to the equity practice where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion of the judge, upon the motion of any party.

E. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the family court and shall be collected in the circuit court.

F. No bond shall be required of a party applying for an appeal from an order of the family court except as may be required for appeals on a charge of nonsupport in Chapter 5 (§ 20-61 et seq.) of Title 20. *Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the family court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal.* Nothing contained in this subsection shall apply to release on bail in the cases specified in subsections B and C of this section.

G. In all cases on appeal to the circuit court, the circuit court in the disposition of such cases shall

have all the powers and authority granted by this chapter to the family court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter.