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## HOUSE BILL NO. 2711

Offered January 20, 1997

*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, relating to jurisdiction of the juvenile and domestic relations court.*

Patrons—Armstrong and Day; Senator: Reynolds

Referred to Committee for Courts of Justice

**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 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, *including all ancillary 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 or divested;

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.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,

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60 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,  
61 father or legal guardian but shall include petitions filed at any time by any party with a legitimate  
62 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not  
63 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party  
64 with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily  
65 terminated by court order if the child subsequently has been legally adopted, or (ii) who has been  
66 convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who  
67 is the subject of the petition was conceived as a result of such violation. The authority of the juvenile  
68 court to consider a petition involving the custody of a child shall not be proscribed or limited where the  
69 child has previously been awarded to the custody of a local board of social services.

70 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the  
71 provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person  
72 or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person  
73 in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1.  
74 Jurisdiction of the commitment and certification of adults shall be concurrent with the general district  
75 court.

76 C. Except as provided in subsections D and H hereof, judicial consent to such activities as may  
77 require parental consent may be given for a child who has been separated from his parents, guardian,  
78 legal custodian or other person standing in loco parentis and is in the custody of the court when such  
79 consent is required by law.

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

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

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

89 1. Who has been abused or neglected;

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

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

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

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

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

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

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

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

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

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

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

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

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

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

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

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

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.

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 subsection B, D, 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, *including all ancillary 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 or divested;

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.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the family court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the family court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the family court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the

183 grand jury shall divest the family court of jurisdiction over the charge and any ancillary charge. In any  
184 case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the family court  
185 determines to transfer the case, jurisdiction of the family court over the case shall be divested as  
186 provided in § 16.1-269.6.

187 In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a  
188 violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a  
189 lesser offense not constituting a violent juvenile felony, the jurisdiction of the family court shall not be  
190 divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

191 The authority of the family court to adjudicate matters involving the custody, visitation, support,  
192 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,  
193 father or legal guardian but shall include petitions filed at any time by any party with a legitimate  
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195 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party  
196 with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily  
197 terminated by court order if the child subsequently has been legally adopted, or (ii) who has been  
198 convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who  
199 is the subject of the petition was conceived as a result of such violation. The authority of the family  
200 court to consider a petition involving the custody of a child shall not be proscribed or limited where the  
201 child has previously been awarded to the custody of a local board of social services.

202 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the  
203 provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person  
204 or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person  
205 in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1.  
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207 court.

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209 require parental consent may be given for a child who has been separated from his parents, guardian,  
210 legal custodian or other person standing in loco parentis and is in the custody of the court when such  
211 consent is required by law.

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213 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person  
214 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person  
215 standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown,  
216 (iii) cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give such  
217 consent or provide such treatment when requested by the judge to do so.

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

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

221 1. Who has been abused or neglected;

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

224 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court  
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233 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or  
234 neglect of children or with any violation of law which causes or tends to cause a child to come within  
235 the purview of this law, or with any other offense against the person of a child. In prosecution for  
236 felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not  
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239 another family or household member is the victim and all offenses under § 18.2-49.1.

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244 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for

challenging directly or collaterally the jurisdiction of the court in which the case is tried. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

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

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

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

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

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

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

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

T. Suits for separate maintenance.

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

V. Petitions for adoption.

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

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

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

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

AA. 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.

BB. 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 subsection B, D, M or R of this section.