

1997 SESSION

LEGISLATION NOT PREPARED BY DLS
ENGROSSED

979834351

HOUSE BILL NO. 2902

House Amendments in [] — February 3, 1997

A BILL to amend and reenact § 16.1-241 [as it is currently effective and as it may become effective, and §§] 20-124.1 and 63.1-233 of the Code of Virginia, relating to standing in certain actions where parental rights have been voluntarily terminated.

Patron—McEachin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-241 as it is currently effective and as it may become effective, and §§ 20-124.1 and 63.1-233 of the Code of Virginia 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 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, ~~either voluntarily or involuntarily [; or any other person whose interest in~~
66 ~~the child derives from or through such person whose parental rights have been so terminated, including~~
67 ~~but not limited to grandparents, stepparents, former stepparents, blood relatives and family members] ,~~
68 if the child subsequently has been legally adopted, [~~or~~] (ii) who has been convicted of a violation of
69 subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the
70 petition was conceived as a result of such violation [, or (iii) ~~any other person whose interest in the~~
71 ~~child derives from or through a person whose parental rights have been terminated by court order,~~
72 ~~including but not limited to grandparents, stepparents, former stepparents, blood relatives and family~~
73 ~~members, if the child subsequently has been legally adopted and such adoption took place before the~~
74 ~~child reached one year of age] . The authority of the juvenile court to consider a petition involving the~~
75 custody of a child shall not be proscribed or limited where the child has previously been awarded to the
76 custody of a local board of social services.

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

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

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

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

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

96 1. Who has been abused or neglected;

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

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

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

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

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

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

116 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
117 determining whether or not there is probable cause. Any objection based on jurisdiction under this
118 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
119 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it
120 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for
121 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. 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 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

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

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

198 The authority of the family court to adjudicate matters involving the custody, visitation, support,
199 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
200 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
201 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
202 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party
203 with a legitimate interest shall not include any person (i) whose parental rights have been ~~involuntarily~~
204 ~~terminated by court order, either voluntarily or involuntarily [; or any other person whose interest in~~
205 ~~the child derives from or through such person whose parental rights have been so terminated, including~~
206 ~~but not limited to grandparents, stepparents, former stepparents, blood relatives and family members] ,~~
207 if the child subsequently has been legally adopted, [~~or~~] (ii) who has been convicted of a violation of
208 subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the
209 petition was conceived as a result of such violation [, or (iii) ~~any other person whose interest in the~~
210 ~~child derives from or through a person whose parental rights have been terminated by court order,~~
211 ~~including but not limited to grandparents, stepparents, former stepparents, blood relatives and family~~
212 ~~members, if the child subsequently has been legally adopted and such adoption took place before the~~
213 ~~child reached one year of age] . The authority of the family court to consider a petition involving the~~
214 custody of a child shall not be proscribed or limited where the child has previously been awarded to the
215 custody of a local board of social services.

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

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

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

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

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

235 1. Who has been abused or neglected;

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

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

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

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

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

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

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it 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.

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 family court upon the filing of a certified copy of such order in the family 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. 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.

§ 20-124.1 Definitions.

As used in this chapter:

"Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents

306 share physical and custodial care of the child or (iii) any combination of joint legal and joint physical
307 custody which the court deems to be in the best interest of the child.

308 "Person with a legitimate interest" shall be broadly construed and includes, but is not limited to
309 grandparents, stepparents, former stepparents, blood relatives and family members provided any such
310 party has intervened in the suit or is otherwise properly before the court. The term shall be broadly
311 construed to accommodate the best interest of the child. A party with a legitimate interest shall not
312 include any person (i) whose parental rights have been ~~involuntarily~~ terminated by court order, *either*
313 *voluntarily or involuntarily [; or any other person whose interest in the child derives from or through*
314 *such person whose parental rights have been so terminated, including but not limited to grandparents,*
315 *stepparents, former stepparents, blood relatives and family members]* , if the child subsequently has
316 been legally adopted, [~~or~~] (ii) who has been convicted of a violation of subsection A of § 18.2-61 or
317 subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result
318 of such violation [, *or (iii) any other person whose interest in the child derives from or through a*
319 *person whose parental rights have been terminated by court order, including but not limited to*
320 *grandparents, stepparents, former stepparents, blood relatives and family members, if the child*
321 *subsequently has been legally adopted and such adoption took place before the child reached one year*
322 *of age]* .

323 "Sole custody" means that one person retains responsibility for the care and control of a child and
324 has primary authority to make decisions concerning the child.

325 § 63.1-233. Legal effects of adoption.

326 The birth parents, and the parents by previous adoption, if any, [*and any other person whose*
327 *interest in the child derives from or through such parent or previous adoptive parent, including but not*
328 *limited to grandparents, stepparents, former stepparents, blood relatives and family members,*] other
329 than any such parent who is the husband or wife of one of the petitioners, shall, by such final order of
330 adoption, be divested of all legal rights and obligations in respect to the child *including the right to*
331 *petition any court for visitation with the child*, and the child shall be free from all legal obligations of
332 obedience and maintenance in respect to them. [*If the final order of adoption is entered before the child*
333 *reaches one year of age, it shall also divest any other person whose interest in the child derives from or*
334 *through such parent or previous adoptive parent, including but not limited to grandparents, stepparents,*
335 *former stepparents, blood relatives and family members, of all legal rights and obligations in respect to*
336 *the child including the right to petition any court for visitation with the child.*] Any child adopted under
337 the provisions of this chapter shall, from and after the entry of the interlocutory order or from and after
338 the entry of the final order where no such interlocutory order is entered, be, to all intents and purposes,
339 the child of the person or persons so adopting him, and, unless and until such interlocutory order or
340 final order is subsequently revoked, shall be entitled to all the rights and privileges, and subject to all
341 the obligations, of a child of such person or persons born in lawful wedlock.