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SENATE BILL NO. 1060

Offered January 20, 1997

A *BILL to amend and reenact § 16.1-296, as it is currently effective and as it may become effective, and § 19.2-123 of the Code of Virginia, relating to child and spousal support; appeal bonds.*

Patron—Reynolds

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 16.1-296, as it is currently effective and as it may become effective, and § 19.2-123 of the Code of Virginia are 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, *including such cases appealed following a conviction pursuant to subsection B of § 16.1-292 or following a criminal or civil show cause proceeding, whether or not a term of confinement is imposed or the amount of support is an issue on appeal*, 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 (i) 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 or (ii) *guarantee the payment of all support arrearages and current and on-going support payments during the*

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60 *pendency of the appeal.* An appeal will not be perfected unless such appeal bond as may be required is
61 filed within thirty days from the entry of the final judgment or order. However, no appeal bond shall be
62 required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an
63 infant, a convict or an insane person, or the interest of a county, city or town.

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

70 This subsection shall not apply to release on bail pursuant to other subsections of this section or
71 § 16.1-298.

72 I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
73 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
74 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
75 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
76 (§ 16.1-266 et seq.) of this chapter.

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

80 § 16.1-296. (Delayed effective date) Appeals to circuit court.

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

83 1. Involving an adult convicted of a violation of the criminal laws pursuant to subdivisions E, I, or J
84 of § 16.1-241;

85 2. Involving a juvenile found to be delinquent or found guilty of a traffic infraction;

86 3. Involving a juvenile found to be in need of services, in need of supervision, or to be a status
87 offender;

88 4. Involving a conviction pursuant to § 16.1-278 or a finding of criminal contempt;

89 5. Arising pursuant to subdivision B of § 16.1-241 involving persons alleged to be mentally ill or
90 mentally retarded; provided, however, the applicable period for the appeal of mental commitment orders
91 shall be as specified in §§ 16.1-344 and 37.1-67.6.

92 Upon receipt of notice of such appeal the family court shall forthwith transmit to the attorney for the
93 Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273,
94 which shall be confidential in nature and made available only to the court and the attorney for the
95 defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has
96 made its findings on the issues subject to appeal. After final determination of the case, the report and all
97 copies thereof shall be forthwith returned to such family court.

98 B. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition
99 pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act
100 may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the
101 alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall
102 be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the
103 jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of
104 § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237
105 or § 16.1-273.

106 C. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction
107 of the family court, the appeal shall be dealt with in all respects as is an appeal from a general district
108 court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a
109 charge of nonsupport, the procedure shall be as is provided for appeals in prosecutions under Chapter 5
110 (§ 20-61 et seq.) of Title 20.

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

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

117 F. No bond shall be required of a party applying for an appeal from an order of the family court
118 except as may be required for appeals on a charge of nonsupport in Chapter 5 (§ 20-61 et seq.) of Title
119 20 *and except for those cases involving support which are appealed following a conviction pursuant to*
120 *subsection B of § 16.1-292 or following a criminal or civil show cause proceeding, whether or not a*
121 *term of confinement is imposed or the amount of support is an issue on appeal. The court may require*

bond with surety to guarantee the payment of all support arrearages and current and on-going support payments 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.

§ 19.2-123. Release of accused on unsecured bond or promise to appear; conditions of release.

A. If any judicial officer has brought before him any person held in custody and charged with an offense, other than an offense punishable by death, or a juvenile taken into custody pursuant to § 16.1-246, the judicial officer shall consider the release pending trial or hearing of the accused on his recognizance.

In the case of a juvenile or in any case where the judicial officer determines that such a release will not reasonably assure the appearance of the accused as required, the judicial officer shall then, either in lieu of or in addition to the above methods of release, impose any one or any combination of the following conditions of release which will reasonably assure the appearance of the accused or juvenile for trial or hearing:

1. Place the person in the custody of a designated person or organization agreeing to supervise him or in the custody and under the supervision of a pretrial services agency which, for the purposes of this section, shall not include a court services unit established pursuant to § 16.1-233;

2. Place restrictions on the travel, association or place of abode of the person during the period of release and restrict contacts with household members for a period not to exceed seventy-two hours;

2a. Require the execution of an unsecured bond;

3. Require the execution of a secure bond which at the option of the accused shall be satisfied with sufficient solvent sureties, or the deposit of cash in lieu thereof. Only the actual value of any interest in real estate or personal property owned by the proposed surety shall be considered in determining solvency and solvency shall be found if the value of the proposed surety's equity in the real estate or personal property equals or exceeds the amount of the bond. *In cases involving support in which a show cause has been issued, bond with surety may be required as provided in § 16.2-296; or*

4. Impose any other condition deemed reasonably necessary to assure appearance as required, and to assure his good behavior pending trial, including a condition requiring that the person return to custody after specified hours or be placed on home electronic incarceration pursuant to § 53.1-131.2.

Upon satisfaction of the terms of recognizance, the accused shall be released forthwith.

In addition, where the accused is a resident of a state training center for the mentally retarded, the judicial officer may place the person in the custody of the director of the state facility, if the director agrees to accept custody. Such director is hereby authorized to take custody of such person and to maintain him at the training center prior to a trial or hearing under such circumstances as will reasonably assure the appearance of the accused for the trial or hearing.

B. In any jurisdiction served by a pretrial services agency which offers a drug testing program approved for the purposes of this subsection by the chief general district court judge, any such accused or juvenile charged with a crime may be requested by such agency to give voluntarily a urine sample. This sample may be analyzed for the presence of phencyclidine (PCP), barbiturates, cocaine, opiates or such other drugs as the agency may deem appropriate prior to any hearing to establish bail. The judicial officer and agency shall inform the accused or juvenile being tested that test results shall be used by a judicial officer only at a bail hearing and only to determine appropriate conditions of release or to reconsider the conditions of bail at a subsequent hearing. All test results shall be confidential with access thereto limited to judicial officers, the attorney for the Commonwealth, defense counsel and, in cases where a juvenile is tested, the parents or legal guardian or custodian of such juvenile. However, in no event shall the judicial officer have access to any test result prior to making a bail release determination or to determining the amount of bond, if any. Following this determination, the judicial officer shall consider the test results and the testing agency's report and accompanying recommendations, if any, in setting appropriate conditions of release. In no event shall a decision regarding a release determination be subject to reversal on the sole basis of such test results. Any accused or juvenile whose urine sample has tested positive for such drugs and who is admitted to bail may, as a condition of release, be ordered to refrain from use of alcohol or illegal drugs and may be required to be tested on a periodic basis until final disposition of his case to ensure his compliance with the order. Sanctions for a violation of any condition of release, which violations shall include subsequent positive drug test results or failure to report as ordered for testing, may be imposed in the discretion of the judicial officer and may include imposition of more stringent conditions of release, contempt of court proceedings or revocation of release. Any test given under the provisions of this subsection which yields a positive drug

183 test result shall be reconfirmed by a second test if the person tested denies or contests the initial drug
184 test positive result. The results of any drug test conducted pursuant to this subsection shall not be
185 admissible in any judicial proceeding other than for the imposition of sanctions for a violation of a
186 condition of release.

187 C. [Repealed.]

188 D. Nothing in this section shall be construed to prevent an officer taking a juvenile into custody
189 from releasing that juvenile pursuant to § 16.1-247. If any condition of release imposed under the
190 provisions of this section is violated, a judicial officer may issue a capias or order to show cause why
191 the recognizance should not be revoked.