

971405722

SENATE BILL NO. 1101

Offered January 20, 1997

A BILL to amend and reenact §§ 16.1-241, 16.1-296, 17-116.05 and 20-79 of the Code of Virginia, as they are currently effective, relating to jurisdiction over child custody matters.

Patron—Norment

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 16.1-296, 17-116.05 and 20-79 of the Code of Virginia, as they are currently effective, 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; *however, any matter, other than a criminal charge of nonsupport filed in the juvenile court pursuant to this section, may be removed by any party to a court having equity jurisdiction, provided the party files a written notice of removal with the clerk and all interested parties on or before the original return date of the petition, or within ten days after the original return date of the petition, provided the trial of the case has not commenced. The pretrial procedures of Part Four of the Rules of the Supreme Court shall apply to matters which are not removed to the circuit court.*

Upon the filing of any petition pursuant to this subdivision, other than a petition alleging criminal nonsupport, the clerk of the juvenile court shall notify all parties that any appeal from a decision of the juvenile court on the matter shall be to the Court of Appeals and must be filed within thirty days of any final judgment or order pursuant to the provisions of Chapters 26.1 (§ 8.01-675.3 et seq.) and 26.2 (§ 8.01-676.1 et seq.) of Title 8.01;

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

INTRODUCED

SB1101

60 to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge.
61 In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile
62 court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as
63 provided in § 16.1-269.6.

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

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

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

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

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

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

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

98 1. Who has been abused or neglected;

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

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

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

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

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

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

118 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to
119 determining whether or not there is probable cause. Any objection based on jurisdiction under this
120 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,
121 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. 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.

§ 16.1-296. Jurisdiction of appeals; procedure.

A. ~~From~~ *Except as provided in subsection B, 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. *An appeal by any party in a case involving custody, visitation or support filed pursuant to subsection A 3 of § 16.1-243 shall be taken within thirty days of entry of a final order and shall lie to the Court of Appeals.*

C. 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.

€ D. 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

183 pursuant to § 16.1-237 or § 16.1-273.

184 *DE.* When an appeal is taken in a case involving termination of parental rights brought under
185 § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the
186 perfecting of the appeal.

187 *E F.* Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction
188 of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an
189 appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal
190 is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in
191 prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

192 *FG.* In all other cases on appeal, proceedings in the circuit court shall conform to the equity practice
193 where evidence is heard *ore tenus*; however, an issue out of chancery may be allowed, in the discretion
194 of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to
195 § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the
196 circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

197 *G H.* Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial
198 fee could have been assessed in the juvenile and domestic relations court and shall be collected in the
199 circuit court *or the Court of Appeals*.

200 *HI.* No appeal bond shall be required of a party appealing from an order of a juvenile and domestic
201 relations district court except for that portion of any order or judgment establishing a support arrearage
202 or suspending payment of support during pendency of an appeal. In cases involving support, no appeal
203 shall be allowed until the party applying for the same or someone for him gives bond, in an amount and
204 with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment
205 as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment
206 of the court in which it was rendered. An appeal will not be perfected unless such appeal bond as may
207 be required is filed within thirty days from the entry of the final judgment or order. However, no appeal
208 bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a
209 decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

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

216 This subsection shall not apply to release on bail pursuant to other subsections of this section or
217 § 16.1-298.

218 *IJ.* In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers
219 and authority granted by the chapter to the juvenile and domestic relations district court. Unless
220 otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint
221 counsel for the parties and compensate such counsel in accordance with the provisions of Article 6
222 (§ 16.1-266 et seq.) of this chapter.

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

226 § 17-116.05. Appellate jurisdiction - Administrative agency, Virginia Workers' Compensation
227 Commission, and domestic relations appeals.

228 Any aggrieved party may appeal to the Court of Appeals from:

- 229 1. Any final decision of a circuit court on appeal from a decision of an administrative agency;
- 230 2. Any final decision of the Virginia Workers' Compensation Commission;
- 231 3. *Any final judgment, order or decree of a juvenile and domestic relations district court in a case,*
232 *other than criminal nonsupport, involving the custody, visitation or support of a child;*
- 233 4. Any final judgment, order, or decree of a circuit court involving:
 - 234 a. Affirmance or annulment of a marriage;
 - 235 b. Divorce;
 - 236 c. Custody;
 - 237 d. Spousal or child support;
 - 238 e. ~~The~~ *Except as provided in subdivision 3, the* control or disposition of a child;
 - 239 f. Any other domestic relations matter arising under Title 16.1 or Title 20; or
 - 240 g. Adoption under Chapter 11 (§ 63.1-220 et seq.) of Title 63.1;
- 241 4.5. Any interlocutory decree or order entered in any of the cases listed in this section (i) granting,
242 dissolving, or denying an injunction or (ii) adjudicating the principles of a cause.

243 20-79. Effect of divorce proceedings.

244 (a) In any case where an order has been entered under the provisions of this chapter, directing either

party to pay any sum or sums of money for the support of his or her spouse, or concerning the care, custody or maintenance of any child, or children, the jurisdiction of the court which entered such order shall cease and its orders become inoperative upon the entry of a decree by the court or the judge thereof in vacation in a suit for divorce instituted in any circuit court in this Commonwealth having jurisdiction thereof, in which decree provision is made for support and maintenance for the spouse or concerning the care, custody or maintenance of a child or children, or concerning any matter provided in a decree in the divorce proceedings in accordance with the provisions of § 20-103.

(b) In any suit for divorce, the court in which the suit is instituted or pending, when either party to the proceedings so requests, shall provide in its decree for the maintenance, support, care or custody of the child or children in accordance with Chapter 6.1 (§ 20-124.1 et seq.), support and maintenance for the spouse, if the same be sought, and counsel fees and other costs, if in the judgment of the court any or all of the foregoing should be so decreed.

(c) In any suit for divorce or suit for maintenance and support, the court may after a hearing, pendente lite, or in any decree of divorce a mensa et thoro, decree of divorce a vinculo matrimonii, final decree for maintenance and support, or subsequent decree in such suit, transfer to the juvenile and domestic relations district court the enforcement of its orders pertaining to support and maintenance for the spouse, maintenance, support, care and custody of the child or children, *except that if a case is removed to the circuit court pursuant to subdivision A 3 of § 16.1-241, the circuit court may not thereafter transfer the case for enforcement of its orders pertaining to the matters transferred.* After the entry of a decree of divorce a vinculo matrimonii the court may transfer to the juvenile and domestic relations district court any other matters pertaining to support and maintenance for the spouse, maintenance, support, care and custody of the child or children on motion by either party, and may so transfer such matters before the entry of such decree on motion joined in by both parties, *provided in either such case that the matter had not before been filed in the juvenile court and either been (i) removed to the circuit court or (ii) determined by the juvenile court and not appealed.* In the transfer of any matters referred to herein, the court may, upon the motion of any party, or on its own motion, and for good cause shown, transfer any matters covered by said decree or decrees to any juvenile and domestic relations district court within the Commonwealth that constitutes a more appropriate forum. An appeal of an order by such juvenile and domestic relations district court which is to enforce or modify the decree in the divorce suit shall be as provided in § 16.1-296.