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SENATE BILL NO. 436

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact § 16.1-244 of the Code of Virginia, relating to jurisdiction in cases involving appeals of emergency protective orders and emergency removal orders.

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-244 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-244. Concurrent jurisdiction; exceptions.

A. Nothing contained in this law shall deprive any other court of the concurrent jurisdiction to determine the custody of children upon a writ of habeas corpus under the law, or to determine the custody, guardianship, visitation or support of children when such custody, guardianship, visitation or support is incidental to the determination of causes pending in such courts, nor deprive a circuit court of jurisdiction to determine spousal support in a suit for separate maintenance. However, when a suit for divorce has been filed in a circuit court, in which the custody, guardianship, visitation or support of children of the parties or spousal support is raised by the pleadings and a hearing, including a pendente lite hearing, is set by the circuit court on any such issue for a date certain or on a motions docket to be heard within 21 days of the filing, the juvenile and domestic relations district courts shall be divested of the right to enter any further decrees or orders to determine custody, guardianship, visitation or support when raised for such hearing and such matters shall be determined by the circuit court unless both parties agreed to a referral to the juvenile court.

A person shall file in circuit court, which shall hear and determine, any petition for an order under § 16.1-253 or 16.1-253.1 if (i) the person previously filed in juvenile and domestic relations district court a petition for an order under § 16.1-253.4; (ii) the juvenile and domestic relations district court issued such order for the protection of a child; (iii) a parent, guardian, legal custodian or other person standing in loco parentis of such child filed a timely appeal of such order entered pursuant to § 16.1-253; (iv) a hearing on such appeal is set by the circuit court for a date certain or on a motions docket to be heard within five days of the entry of such order; and (v) the purpose for which the person seeks a petition for an order under § 16.1-253 or 16.1-253.1 is for the protection of the same child described in clauses (ii) and (iii). The juvenile and domestic relations district courts shall be divested of the right to enter any order pursuant to § 16.1-253 that involves the same child if all of the conditions set forth in clauses (i) through (v) exist.

A party or agency shall file in circuit court, which shall hear and determine, any petition for an order under § 16.1-252 if (i) the party or agency previously filed in juvenile and domestic relations district court a petition for an order under § 16.1-251; (ii) the juvenile and domestic relations district court issued such order for the removal of a child; (iii) the parent, guardian, legal custodian or other person standing in loco parentis of such child filed a timely appeal of such order entered pursuant to § 16.1-251; (iv) a hearing on such appeal is set by the circuit court for a date certain or on a motions docket to be heard within five days of the entry of such order; and (v) the purpose for which the party or agency seeks a petition for an order under § 16.1-252 is for the removal of the same child described in clauses (ii) and (iii). The juvenile and domestic relations district courts shall be divested of the right to enter any order pursuant to § 16.1-252 that involves the same child if all of the conditions set forth in clauses (i) through (v) exist.

Nothing in this section shall deprive a circuit court of the authority to refer any such case to a commissioner for a hearing or shall deprive the juvenile and domestic relations district courts of the jurisdiction to enforce its valid orders prior to the entry of a conflicting order of any circuit court for any period during which the order was in effect or to temporarily place a child in the custody of any person when that child has been adjudicated abused, neglected, in need of services or delinquent subsequent to the order of any circuit court.

B. Jurisdiction of cases involving violations of federal law by a child shall be concurrent and shall be assumed only if waived by the federal court or the United States attorney.

INTRODUCED

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