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HOUSE BILL NO. 1912

Offered January 13, 2021

Prefiled January 10, 2021

A BILL to amend and reenact §§ 16.1-263, 16.1-286, and 16.1-290 of the Code of Virginia, relating to child support payments; juvenile in custody of or committed to the Department of Juvenile Justice.

Patrons—Hope, Adams, D.M., Aird, Bourne, Carr, Carter, Hudson, Hurst, Keam, Kory, Levine, Murphy, Plum, Price, Rasoul, Samirah, Simon and Simonds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-263, 16.1-286, and 16.1-290 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-263. Summonses.

A. After a petition has been filed, the court shall direct the issuance of summonses, one directed to the juvenile, if the juvenile is twelve or more years of age, and another to at least one parent, guardian, legal custodian, or other person standing in loco parentis, and such other persons as appear to the court to be proper or necessary parties to the proceedings.

After a petition has been filed against an adult pursuant to subsection C or D of § 16.1-259, the court shall direct the issuance of a summons against the adult.

The summons shall require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned and such person is not a parent of the juvenile in question, a parent shall also be served with a summons. The court may direct that other proper or necessary parties to the proceedings be notified of the pendency of the case, the charge and the time and place for the hearing.

Any such summons shall be deemed a mandate of the court, and willful failure to obey its requirements shall subject any person guilty thereof to liability for punishment for contempt. Upon the failure of any person to appear as ordered in the summons, the court shall immediately issue an order for such person to show cause why he should not be held in contempt.

The parent, guardian, legal custodian, or other person standing in loco parentis shall not be summoned to appear or be punished for failure to appear in cases of adults who are brought before the court pursuant to subsection C or D of § 16.1-259 unless such person is summoned as a witness.

B. The summons shall advise the parties of their right to counsel as provided in § 16.1-266. A copy of the petition shall accompany each summons for the initial proceedings. The summons shall include notice that in the event that the juvenile is committed to the Department or to a secure local facility, at least one parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for support and treatment of the juvenile pursuant to § 16.1-290. Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date, and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has notified the court that he no longer represents such party.

C. The judge may endorse upon the summons an order directing a parent or parents, guardian, or other custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

D. A party, other than the juvenile, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

E. No such summons or notification shall be required if the judge shall certify on the record that (i) the identity of a parent or guardian is not reasonably ascertainable or (ii) in cases in which it is alleged that a juvenile has committed a delinquent act, crime, status offense, or traffic infraction or is in need of services or supervision, the location, or in the case of a parent or guardian located outside of the Commonwealth the location or mailing address, of a parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. In cases referred to in clause (ii), an affidavit of a law-enforcement officer or juvenile probation officer that the location of a parent or guardian is not reasonably ascertainable shall be sufficient evidence of this fact, provided that there is no other evidence before the court which would refute the affidavit.

§ 16.1-286. Cost of maintenance; approval of placement; semiannual review.

A. When the court determines that the behavior of a child within its jurisdiction is such that it cannot

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58 be dealt with in the child's own locality or with the resources of his locality, the judge shall refer the
59 child to the locality's family assessment and planning team for assessment and a recommendation for
60 services. Based on this recommendation, the court may take custody and place the child, pursuant to the
61 provisions of subdivision 5 of § 16.1-278.4 or subdivision A 13 b of § 16.1-278.8, in a private or
62 locally operated public facility, or nonresidential program with funding in accordance with the Children's
63 Services Act (§ 2.2-5200 et seq.). No child shall be placed outside the Commonwealth by a court
64 without first complying with the appropriate provisions of Chapter 11 (§ 63.2-1100 et seq.) of Title 63.2
65 or with regulations of the State Board of Social Services relating to resident children placed out of the
66 Commonwealth.

67 The Board shall establish a per diem allowance to cover the cost of such placements. This allowance
68 may be drawn from funds allocated through the state pool of funds to the community policy and
69 management team of the locality where the child resides as such residence is determined by the court.
70 The cost, however, shall not exceed that amount which would be incurred if the services required by the
71 child were provided in a juvenile facility operated by the Department of Juvenile Justice. However,
72 when the court determines after an investigation and a hearing that the child's parent or other person
73 legally obligated to provide support is financially able to contribute to support of the child, the court
74 may order that the parent or other legally obligated person pay, pursuant to § 16.1-290. If the parent or
75 other obligated person willfully fails or refuses to pay such sum, the court may proceed against him for
76 contempt. Alternatively, the court, after reasonable notice to the obligor, may enter an order adjudicating
77 that the obligor is delinquent and such order shall have the effect of a civil judgment when duly
78 docketed in the manner prescribed for the docketing of other judgments for money provided.

79 B. The court service unit of the locality which made the placement shall be responsible for
80 monitoring and supervising all children placed pursuant to this section. The court shall receive and
81 review, at least semiannually, recommendations concerning the continued care of each child in such
82 placements.

83 **§ 16.1-290. Support of committed juvenile; support from estate of juvenile.**

84 A. Whenever (i) legal custody of a juvenile is vested by the court in someone other than his parents
85 or (ii) a juvenile is placed in temporary shelter care regardless of whether or not legal custody is
86 retained by his parents, after due notice in writing to the parents, the court, pursuant to §§ 20-108.1 and
87 20-108.2, or the Department of Social Services, pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title
88 63.2, shall order the parents to pay support to the Department of Social Services. If the parents fail or
89 refuse to pay such support, the court may proceed against them for contempt, or the order may be filed
90 and shall have the effect of a civil judgment. *The provisions of this subsection shall not apply to a*
91 *juvenile who is placed in temporary custody of the Department pursuant to subdivision A 4a of §*
92 *16.1-278.8 or committed to the Department pursuant to subdivision A 14 or A 17 of § 16.1-278.8.*

93 B. If a juvenile has an estate in the hands of a guardian or trustee, the guardian or trustee may be
94 required to pay for his education and maintenance so long as there may be funds for that purpose.

95 C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the
96 parents shall pay the Department of Social Services pursuant to §§ 20-108.1, 20-108.2, 63.2-909, and
97 63.2-1910.

98 D. Whenever a juvenile is placed in temporary custody of the Department pursuant to subdivision A
99 4a of § 16.1-278.8 or committed to the Department pursuant to subdivision A 14 or A 17 of
100 § 16.1-278.8, the Department shall apply for child support with the Department of Social Services. The
101 parents shall be responsible for child support, pursuant to §§ 20-108.1 and 20-108.2, from the date the
102 Department receives the juvenile. The Department shall notify in writing the parents of their
103 responsibilities to pay child support from the date the Department receives the juvenile.

104 **2. That any child support order entered pursuant to the provisions of former subsection D of**
105 **§ 16.1-290 of the Code of Virginia in effect prior to the enactment of this act is terminated.**