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HOUSE BILL NO. 2150

Offered January 13, 2021

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A BILL to amend and reenact §§ 16.1-123.1, 16.1-241, and 17.1-513 of the Code of Virginia, relating to jurisdiction over criminal cases; certification or appeal of charges.

Patron—Adams, L.R.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-123.1, 16.1-241, and 17.1-513 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-123.1. Criminal and traffic jurisdiction of general district courts.

1. Each general district court shall have, within the county, including the towns within such county, or city for which it is established, exclusive original jurisdiction for the trial of:

a. All offenses against the ordinances, laws and bylaws of such county, including the towns within such county, or city or of any service district within such county or city, except a city ordinance enacted pursuant to §§ 18.2-372 through 18.2-391.1. All offenses against the ordinances of a service district shall be prosecuted in the name of such service district;

b. All other misdemeanors and traffic infractions arising in such county, including the towns in such county, or city.

2. Each general district court which is established within a city shall also have:

a. Concurrent jurisdiction with the circuit court of such city for all violations of state revenue and election laws; and

b. Exclusive original jurisdiction, except as otherwise provided by general law or the city charter, within the area extending for one mile beyond the corporate limits thereof, for the trial of all offenses against the ordinances, laws and bylaws of the city.

3. If a city lying within a county has no general district court provided by city charter or under general law, then the general district court of the county within which such city lies shall have the same jurisdiction in such city as a general district court established for a city would have.

4. Each general district court shall have such other jurisdiction, exclusive or concurrent, as may be conferred on such court by general law or by provisions of the charter of the city for which the court was established.

5. Notwithstanding the provisions of subsection C of § 19.2-244, any county general district court authorized by § 16.1-69.35:01 to be established in a city shall have exclusive original jurisdiction for the trial of all misdemeanors committed within or upon the general district court courtroom.

6. Upon certification by the district court of any felony charge and ancillary misdemeanor charge or upon noting an appeal for a conviction of an offense in district court, jurisdiction as to such charges shall vest in the circuit court, unless such case is reopened pursuant to § 16.1-133.1; a final judgment, order, or decree is modified, vacated, or suspended pursuant to Supreme Court of Virginia Rule 1:1; or the appeal has been withdrawn in the district court within 10 days pursuant to § 16.1-133.

7. Nothing herein shall affect the jurisdiction conferred on the juvenile and domestic relations district court by Chapter 11 (§ 16.1-226 et seq.).

§ 16.1-241. Jurisdiction; consent for abortion.

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

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59 as having abused or neglected another child in the care of the parent or custodian;

60 3. Whose custody, visitation or support is a subject of controversy or requires determination. In such
61 cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except
62 as provided in § 16.1-244;

63 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817
64 or whose parent or parents for good cause desire to be relieved of his care and custody;

65 5. Where the termination of residual parental rights and responsibilities is sought. In such cases
66 jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided
67 in § 16.1-244;

68 6. Who is charged with a traffic infraction as defined in § 46.2-100; or

69 7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

70 In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated
71 in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile
72 court shall be limited to conducting a preliminary hearing to determine if there is probable cause to
73 believe that the juvenile committed the act alleged and that the juvenile was 16 years of age or older at
74 the time of the commission of the alleged offense, and any matters related thereto. In any case in which
75 the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of
76 § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given
77 notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited
78 to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile
79 committed the act alleged and that the juvenile was 16 years of age or older at the time of the
80 commission of the alleged offense, and any matters related thereto. A determination by the juvenile
81 court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge
82 to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge.
83 In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile
84 court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as
85 provided in § 16.1-269.6.

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

90 The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,
91 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
92 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
93 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
94 be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family
95 members. A party with a legitimate interest shall not include any person (i) whose parental rights have
96 been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives
97 from or through a person whose parental rights have been terminated by court order, either voluntarily
98 or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood
99 relatives and family members, if the child subsequently has been legally adopted, except where a final
100 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of
101 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another
102 state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was
103 conceived as a result of such violation. The authority of the juvenile court to consider a petition
104 involving the custody of a child shall not be proscribed or limited where the child has previously been
105 awarded to the custody of a local board of social services.

106 A1. Making specific findings of fact required by state or federal law to enable a child to apply for or
107 receive a state or federal benefit.

108 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
109 provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental
110 illness or judicial certification of eligibility for admission to a training center for persons with
111 intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.
112 Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general
113 district court.

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

118 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married
119 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person
120 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person

standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

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

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

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4; or

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

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

H. Judicial consent to apply for a 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 that 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.

Upon certification of any such felony charge and such ancillary misdemeanor charge or upon noting an appeal for a conviction of such an offense in district court, jurisdiction as to such charges shall vest in the circuit court, unless such case is reopened pursuant to § 16.1-133.1; a final judgment, order, or decree is modified, vacated, or suspended pursuant to Supreme Court of Virginia Rule 1:1; or the appeal has been withdrawn in the district court within 10 days pursuant to § 16.1-133.

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, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

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.).

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, 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. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. [Repealed.]

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

182 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect
183 pursuant to § 63.2-1526.

184 U. Petitions filed in connection with parental placement adoption consent hearings pursuant to
185 § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10
186 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible
187 disposition.

188 V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to
189 an adoption when the consent to an adoption is executed pursuant to the laws of another state and the
190 laws of that state provide for the execution of consent to an adoption in the court of the
191 Commonwealth.

192 W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion
193 if a minor elects not to seek consent of an authorized person.

194 After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without
195 the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough
196 informed to make her abortion decision, in consultation with her physician, independent of the wishes of
197 any authorized person, or (ii) the minor is not mature enough or well enough informed to make such
198 decision, but the desired abortion would be in her best interest.

199 If the judge authorizes an abortion based on the best interests of the minor, such order shall
200 expressly state that such authorization is subject to the physician or his agent giving notice of intent to
201 perform the abortion; however, no such notice shall be required if the judge finds that such notice would
202 not be in the best interest of the minor. In determining whether notice is in the best interest of the
203 minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not
204 in the best interest of the minor if he finds that (a) one or more authorized persons with whom the
205 minor regularly and customarily resides is abusive or neglectful and (b) every other authorized person, if
206 any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian,
207 custodian or person standing in loco parentis.

208 The minor may participate in the court proceedings on her own behalf, and the court may appoint a
209 guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and
210 shall, upon her request, appoint counsel for her.

211 Notwithstanding any other provision of law, the provisions of this subsection shall govern
212 proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and
213 records of such proceedings shall be confidential. Such proceedings shall be given precedence over other
214 pending matters so that the court may reach a decision promptly and without delay in order to serve the
215 best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon
216 as practicable but in no event later than four days after the petition is filed.

217 An expedited confidential appeal to the circuit court shall be available to any minor for whom the
218 court denies an order authorizing an abortion without consent or without notice. Any such appeal shall
219 be heard and decided no later than five days after the appeal is filed. The time periods required by this
220 subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent
221 or without notice shall not be subject to appeal.

222 No filing fees shall be required of the minor at trial or upon appeal.

223 If either the original court or the circuit court fails to act within the time periods required by this
224 subsection, the court before which the proceeding is pending shall immediately authorize a physician to
225 perform the abortion without consent of or notice to an authorized person.

226 Nothing contained in this subsection shall be construed to authorize a physician to perform an
227 abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult
228 woman.

229 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent
230 has been obtained or the minor delivers to the physician a court order entered pursuant to this section
231 and the physician or his agent provides such notice as such order may require. However, neither consent
232 nor judicial authorization nor notice shall be required if the minor declares that she is abused or
233 neglected and the attending physician has reason to suspect that the minor may be an abused or
234 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with
235 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the
236 facts justifying the exception in the minor's medical record.

237 For purposes of this subsection:

238 "Authorization" means the minor has delivered to the physician a notarized, written statement signed
239 by an authorized person that the authorized person knows of the minor's intent to have an abortion and
240 consents to such abortion being performed on the minor.

241 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or
242 (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with
243 whom the minor regularly and customarily resides and who has care and control of the minor. Any

person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor children.

Y. Petitions involving minors filed pursuant to § 32.1-45.1 relating to obtaining a blood specimen or test results.

Z. Petitions filed pursuant to § 16.1-283.3 for review of voluntary agreements for continuation of services and support for persons who meet the eligibility criteria for the Fostering Futures program set forth in § 63.2-919.

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 A 3, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M, or R.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection W shall be guilty of a Class 3 misdemeanor.

§ 17.1-513. Jurisdiction of circuit courts.

The circuit courts shall have jurisdiction of proceedings by quo warranto or information in the nature of quo warranto and to issue writs of mandamus, prohibition and certiorari to all inferior tribunals created or existing under the laws of the Commonwealth, and to issue writs of mandamus in all matters of proceedings arising from or pertaining to the action of the boards of supervisors or other governing bodies of the several counties for which such courts are respectively held or in other cases in which it may be necessary to prevent the failure of justice and in which mandamus may issue according to the principles of common law. They shall have appellate jurisdiction in all cases, civil and criminal, in which an appeal may, as provided by law, be taken from the judgment or proceedings of any inferior tribunal.

They shall have original and general jurisdiction of all civil cases, except cases upon claims to recover personal property or money not of greater value than \$100, exclusive of interest, and except such cases as are assigned to some other tribunal; also in all cases for the recovery of fees in excess of \$100; penalties or cases involving the right to levy and collect toll or taxes or the validity of an ordinance or bylaw of any corporation; and also, of all cases, civil or criminal, in which an appeal may be had to the Supreme Court.

They shall have jurisdiction to hear motions filed for the purpose of modifying, dissolving, or extending a protective order pursuant to § 16.1-279.1 or 19.2-152.10 if the circuit court issued such order, unless the circuit court remanded the matter to the jurisdiction of the juvenile and domestic relations district court in accordance with § 16.1-297. They shall also have original jurisdiction of all indictments for felonies and of presentments, informations and indictments for misdemeanors.

Upon certification by the district court of any felony charge and ancillary misdemeanor charge or upon noting an appeal for a conviction of an offense in district court, jurisdiction as to such charges

305 *shall vest in the circuit court, unless such case is reopened pursuant to § 16.1-133.1; a final judgment,*
306 *order, or decree is modified, vacated, or suspended pursuant to Supreme Court of Virginia Rule 1:1; or*
307 *the appeal has been withdrawn in the district court within 10 days pursuant to § 16.1-133.*

308 They shall also have jurisdiction for bail hearings pursuant to §§ 19.2-327.2:1 and 19.2-327.10:1.

309 They shall have appellate jurisdiction of all cases, civil and criminal, in which an appeal, writ of
310 error or supersedeas may, as provided by law, be taken to or allowed by such courts, or the judges
311 thereof, from or to the judgment or proceedings of any inferior tribunal. They shall also have
312 jurisdiction of all other matters, civil and criminal, made cognizable therein by law and when a motion
313 to recover money is allowed in such tribunals, they may hear and determine the same, although it is to
314 recover less than \$100.

315 While a matter is pending in a circuit court, upon motion of the plaintiff seeking to decrease the
316 amount of the claim to within the exclusive or concurrent jurisdiction of the general district court as
317 described in subdivision 1 of § 16.1-77, the circuit court shall order transfer of the matter to the general
318 district court that has jurisdiction over the amended amount of the claim without requiring that the case
319 first be dismissed or that the plaintiff suffer a nonsuit, and the tolling of the applicable statutes of
320 limitations governing the pending matter shall be unaffected by the transfer. Except for good cause
321 shown, no such order of transfer shall issue unless the motion to amend and transfer is made at least 10
322 days before trial. The plaintiff shall pay filing and other fees as otherwise provided by law to the clerk
323 of the court to which the case is transferred, and such clerk shall process the claim as if it were a new
324 civil action. The plaintiff shall prepare and present the order of transfer to the transferring court for
325 entry, after which time the case shall be removed from the pending docket of the transferring court and
326 the order of transfer placed among its records. The plaintiff shall provide a certified copy of the transfer
327 order to the receiving court.