

24105306D

HOUSE BILL NO. 1364

Offered January 15, 2024

A BILL to amend and reenact §§ 16.1-241, 18.2-71, 18.2-75, and 18.2-76 of the Code of Virginia and to repeal §§ 18.2-72 through 18.2-74.1, 32.1-92.1, and 32.1-92.2 of the Code of Virginia, relating to abortion prohibited; exception; life of the mother; penalty.

Patrons—Griffin (By Request) and Zehr

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 18.2-71, 18.2-75, and 18.2-76 of the Code of Virginia are amended and reenacted as follows:

§ 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 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;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 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; or

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

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 16 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 16 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 to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

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

INTRODUCED

HB1364

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

75 A1. Making specific findings of fact required by state or federal law to enable a child to apply for or
76 receive a state or federal benefit. For the purposes of this subsection only, when the court has obtained
77 jurisdiction over the case of any child, the court may continue to exercise its jurisdiction until such
78 person reaches 21 years of age, for the purpose of entering findings of fact or amending past orders, to
79 include findings of fact necessary for the person to petition the federal government for status as a
80 special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).

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

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

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

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

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

- 100 1. Who has been abused or neglected;
- 101 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817
- 102 or is otherwise before the court pursuant to subdivision A 4; or
- 103 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
- 104 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
- 105 conduct of the child complained of in the petition.

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

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

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

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

120 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.

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

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

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

W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion pursuant to § 18.2-71 if a minor elects not to seek consent of an authorized person.

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

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

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

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other

182 pending matters so that the court may reach a decision promptly and without delay in order to serve the
183 best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon
184 as practicable but in no event later than four days after the petition is filed.

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

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

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

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

197 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent
198 has been obtained or the minor delivers to the physician a court order entered pursuant to this section
199 and the physician or his agent provides such notice as such order may require. However, neither consent
200 nor judicial authorization nor notice shall be required if the minor declares that she is abused or
201 neglected and the attending physician has reason to suspect that the minor may be an abused or
202 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with
203 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the
204 facts justifying the exception in the minor's medical record.

205 For purposes of this subsection:

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

209 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or
210 (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with
211 whom the minor regularly and customarily resides and who has care and control of the minor. Any
212 person who knows he is not an authorized person and who knowingly and willfully signs an
213 authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

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

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

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

229 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical
230 procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74 18.2-71.

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

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

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

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

243 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.

Upon certification by the juvenile and domestic relations district court of any felony charge and ancillary misdemeanor charge committed by an adult or when an appeal of a conviction or adjudication of delinquency of an offense in the juvenile and domestic relations district court is noted, 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 juvenile and domestic relations district court within 10 days pursuant to § 16.1-133.

§ 18.2-71. Producing abortion or miscarriage, etc.; penalty.

~~Except as provided in other sections of this article, if~~ *If* any person administer to, or cause to be taken by a woman, any drug or other thing, or use means, with intent to destroy her unborn child, or to produce abortion or miscarriage, and thereby destroy such child, or produce such abortion or miscarriage *after the conception of such unborn child, he shall be* is guilty of a Class 4 ~~felony~~ misdemeanor, *unless it is necessary for a licensed physician to terminate a human pregnancy or assist in the termination of a human pregnancy by performing an abortion or causing a miscarriage on any woman in order to save her life in the opinion of such physician so performing the abortion or causing the miscarriage.*

§ 18.2-75. Conscience clause.

Nothing in ~~§§ 18.2-72, 18.2-73 or § 18.2-74~~ § 18.2-71 shall require a hospital or other medical facility or physician to admit any patient under the provisions hereof for the purpose of performing an abortion. In addition, any person who shall state in writing an objection to any abortion or all abortions on personal, ethical, moral or religious grounds shall not be required to participate in procedures which will result in such abortion, and the refusal of such person, hospital or other medical facility to participate therein shall not form the basis of any claim for damages on account of such refusal or for any disciplinary or recriminatory action against such person, nor shall any such person be denied employment because of such objection or refusal. The written objection shall remain in effect until such person shall revoke it in writing or terminate his association with the facility with which it is filed.

§ 18.2-76. Informed written consent required.

Before performing any abortion or inducing any miscarriage or terminating a pregnancy as provided in ~~§ 18.2-72, 18.2-73, or 18.2-74~~ 18.2-71, the physician ~~or, if such abortion, induction, or termination is to be performed pursuant to § 18.2-72, either the physician or the advanced practice registered nurse authorized pursuant to clause (ii) of § 18.2-72 to perform such abortion, induction, or termination shall obtain the informed written consent of the pregnant woman. However, if the woman has been adjudicated incapacitated by any court of competent jurisdiction or if the physician or, if the abortion, induction, or termination is to be performed pursuant to § 18.2-72, either the physician or the advanced practice registered nurse authorized pursuant to clause (ii) of § 18.2-72 to perform such abortion, induction, or termination knows or has good reason to believe that such woman is incapacitated as adjudicated by a court of competent jurisdiction, then only after permission is given in writing by a parent, guardian, committee, or other person standing in loco parentis to the woman, may the physician or, if the abortion, induction, or termination is to be performed pursuant to § 18.2-72, either the physician or the advanced practice registered nurse authorized pursuant to clause (ii) of § 18.2-72 to perform such abortion, induction, or termination perform the abortion or otherwise terminate the pregnancy.~~

2. That §§ 18.2-72 through 18.2-74.1, 32.1-92.1, and 32.1-92.2 of the Code of Virginia are repealed.