

LD4449324

HOUSE BILL NO. 1420

Offered January 11, 1995

Prefiled October 28, 1994

A BILL to amend and reenact § 16.1-241 of the Code of Virginia, as it is currently effective and as it may become effective, and to amend the Code of Virginia by adding sections numbered 18.2-75.1, 18.2-75.2 and 18.2-75.3, relating to procedures governing abortions for minors; penalty.

Patron—Marshall

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-241 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-75.1, 18.2-75.2 and 18.2-75.3 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;

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 § 63.1-56 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.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

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

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

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person

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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 this Commonwealth, (ii) his whereabouts is unknown, (iii) he 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 § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;

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 which 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 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 which 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. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. 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 Youth and Family Services.

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 for obtaining authorization for a physician to perform an abortion pursuant to § 18.2-75.2.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

§ 16.1-241. (Delayed effective date) Jurisdiction.

The judges of the family 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 family 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 family court or courts of the adjoining city or county over all cases, matters and proceedings involving:

- 122 A. The custody, visitation, support, control or disposition of a child:
- 123 1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status
- 124 offender, or delinquent;
- 125 2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical
- 126 or mental incapacity of his parents is without parental care and guardianship;
- 127 2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated
- 128 as having abused or neglected another child in the care of the parent or custodian;
- 129 3. Whose custody, visitation or support is a subject of controversy or requires determination;
- 130 4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
- 131 or whose parent or parents for good cause desire to be relieved of his care and custody;
- 132 5. Where the termination of residual parental rights and responsibilities is sought;
- 133 6. Who is charged with a traffic infraction as defined in § 46.2-100.
- 134 The authority of the family court to adjudicate matters involving the custody, visitation, support,
- 135 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,
- 136 father or legal guardian but shall include petitions filed at any time by any party with a legitimate
- 137 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not
- 138 be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The
- 139 authority of the family court to consider a petition involving the custody of a child shall not be
- 140 proscribed or limited where the child has previously been awarded to the custody of a local board of
- 141 social services.
- 142 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the
- 143 provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person
- 144 or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person
- 145 in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1.
- 146 Jurisdiction of the commitment and certification of adults shall be concurrent with the general district
- 147 court.
- 148 C. Except as provided in subsections D and H hereof, judicial consent to such activities as may
- 149 require parental consent may be given for a child who has been separated from his parents, guardian,
- 150 legal custodian or other person standing in loco parentis and is in the custody of the court when such
- 151 consent is required by law.
- 152 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married
- 153 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person
- 154 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person
- 155 standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his whereabouts is unknown,
- 156 (iii) cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give such
- 157 consent or provide such treatment when requested by the judge to do so.
- 158 E. Any person charged with deserting, abandoning or failing to provide support for any person in
- 159 violation of law pursuant to Chapter 5 (§ 20-61 et seq.) of Title 20.
- 160 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:
- 161 1. Who has been abused or neglected;
- 162 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204
- 163 or is otherwise before the court pursuant to subdivision A 4 of this section;
- 164 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court
- 165 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the
- 166 conduct of the child complained of in the petition.
- 167 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other
- 168 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services
- 169 which are required by law to be provided for that child or such child's parent, guardian, legal custodian
- 170 or other person standing in loco parentis.
- 171 H. Judicial consent to apply for work permit for a child when such child is separated from his
- 172 parents, legal guardian or other person standing in loco parentis.
- 173 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or
- 174 neglect of children or with any violation of law which causes or tends to cause a child to come within
- 175 the purview of this law, or with any other offense against the person of a child. In prosecution for
- 176 felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not
- 177 there is probable cause.
- 178 J. All offenses in which one family or household member is charged with an offense in which
- 179 another family or household member is the victim. In prosecution for felonies over which the court has
- 180 jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For
- 181 purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be
- 182 construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and

183 grandchild, regardless of whether such persons reside in the same home.

184 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily
185 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such
186 parental rights. No such petition shall be accepted, however, after the child has been placed in the home
187 of adoptive parents.

188 L. Any person who seeks spousal support after having separated from his spouse.

189 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or
190 § 16.1-279.1.

191 N. Any person who escapes or remains away without proper authority from a residential care facility
192 in which he had been placed by the court or as a result of his commitment to the Virginia Department
193 of Youth and Family Services.

194 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

195 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13
196 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered
197 by a family court upon the filing of a certified copy of such order in the family court.

198 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

199 R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

200 S. Suits for divorce and for annulling or affirming marriage in accordance with Title 20.

201 T. Suits for separate maintenance.

202 U. Suits for equitable distribution based on a foreign decree in accordance with § 20-107.3.

203 V. Petitions for adoption.

204 W. Petitions for change of name when incident to suits for annulling or affirming marriage, divorce,
205 or adoption or when ancillary to any action within the jurisdiction of the family court.

206 X. Petitions regarding records of birth pursuant to Chapter 7 (§ 32.1-249 et seq.) of Title 32.1.

207 Y. Judicial review of school board actions pursuant to § 22.1-87 and of hearing officer decisions
208 pursuant to §§ 22.1-214 and 22.1-214.1.

209 Z. *Petitions for obtaining authorization for a physician to perform an abortion pursuant to*
210 *§ 18.2-75.2.*

211 The ages specified in this law refer to the age of the child at the time of the acts complained of in
212 the petition.

213 *§ 18.2-75.1. Minors; abortion requirements and procedure; penalty.*

214 A. *No physician shall knowingly perform an abortion, induce any miscarriage or terminate any*
215 *pregnancy as provided in § 18.2-72, § 18.2-73, or § 18.2-74, including the performance of menstrual*
216 *regulation for the purpose of confirming a nonpregnancy, upon an unemancipated minor under the age*
217 *of eighteen years unless:*

218 *1. The physician or his agent has given directly to a parent, person standing in loco parentis with*
219 *whom the minor resides on a regular basis and under such person's care and control in the absence of*
220 *the minor's parent or parents and with the consent of such parent or parents, or other lawfully*
221 *appointed custodian of the minor, either in person or by telephone, at least twenty-four hours' actual*
222 *notice of his intention to perform such abortion, and the physician has secured the informed, written*
223 *consent of the minor;*

224 *2. After a reasonable effort to notify the parent or other person as required by subdivision 1, (i) the*
225 *physician or his agent has mailed notice to one parent or such other person by certified mail addressed*
226 *to the parent or other person at his usual place of abode, with return receipt requested, (ii) seventy-two*
227 *hours have elapsed since such mailing, and (iii) the physician has secured the informed written consent*
228 *of the minor;*

229 *3. At least one person who is entitled to notice under subdivision 1 is present with the minor seeking*
230 *the abortion, and the physician has secured the informed written consent of the minor; or*

231 *4. The abortion is authorized in a notarized writing by at least one person who is entitled to notice*
232 *under subdivision 1, the authorization is delivered to the physician prior to the abortion, and the*
233 *physician has secured the informed written consent of the minor.*

234 *In the event a male who is a minor (i) acknowledges paternity of the preborn child or (ii) is*
235 *identified by the minor female as being the father of the preborn child, the notice required in*
236 *subdivisions 1 and 2 shall also be given by the physician or his agent to one of the putative father's*
237 *parents or other person as provided in such subdivisions.*

238 *For purposes of this section, a minor shall be emancipated if: (i) the minor has entered into a valid*
239 *marriage, whether or not that marriage has been terminated by dissolution; (ii) the minor is on active*
240 *duty with any of the armed forces of the United States of America; (iii) the minor willingly lives*
241 *separate and apart from his parents or guardian, with the consent or acquiescence of the parents or*
242 *guardian, and the minor is or is capable of supporting himself and competently managing his own*
243 *financial affairs or (iv) the minor has been judicially declared emancipated pursuant to Article 15*
244 *(§ 16.1-331 et seq.) of Chapter 11 of Title 16.1.*

For purposes of determining whether any person seeking an abortion has obtained the age of majority, no abortion shall be performed under the provisions of this article until such person has presented satisfactory proof of age to the physician requested to perform the abortion.

B. Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion, induces any miscarriage or terminates any pregnancy upon an unmarried, unemancipated woman under the age of eighteen years which would otherwise be lawful under the provisions of this article without complying with the provisions of this section and § 18.2-75.2 shall be guilty of a Class 3 misdemeanor.

§ 18.2-75.2. Minor's abortion; judicial procedure in lieu of notification.

If an unmarried, unemancipated minor elects not to allow the notification of one of her parents or other person as provided in § 18.2-75.1, upon petition as provided in § 16.1-241 and after hearing, a judge may authorize a physician to perform the abortion if the judge determines that all persons entitled to notice under § 18.2-75.1 have abused or neglected the minor.

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

Court proceedings under this section shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the minor's best interests. Court proceedings under this section shall be heard as soon as practicable, but in no event later than five business days after the petition is filed.

An expedited confidential appeal shall be available to any minor for whom the court denies an order authorizing an abortion without notification. Any such appeal must be heard and decided no later than five business days after the appeal is filed. An order authorizing an abortion without notification shall not be subject to appeal, except by the guardian ad litem.

No filing fees shall be required of the minor at either the trial or appellate level.

For purposes of establishing a statistical record of the number of abortions authorized under this section, the clerk of the appropriate court shall send written notification to the Virginia Department of Health each time an abortion is authorized pursuant to this section, together with the name of the judge who entered the order authorizing the abortion. The Department of Health shall maintain this record which shall be made available to any member of the General Assembly upon request.

§ 18.2-75.3. When notification or judicial approval not required.

The provisions of § 18.2-75.1 shall not apply when the attending physician certifies in the minor's medical record that, in his good faith medical judgment, medical intervention is necessary immediately to preserve the minor's life or the life of her unborn child. Written notice shall be given to the person entitled to notice pursuant to § 18.2-75.1 by the attending physician as soon as practicable, but no later than ten days after the medical emergency, to ensure that the person entitled to notice may fulfill any obligation to secure and provide for medical care for the minor.