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SENATE BILL NO. 999

Offered January 23, 1995

A BILL to amend and reenact §§ 16.1-252 and 16.1-290 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 63.1-204.2, 63.1-204.3 and 63.1-251.3, relating to child support and foster care.

Patrons—Gartlan, Barry, Calhoun, Colgan, Howell and Woods; Delegates: Callahan, Connally, Darner, Fisher, McClure, Orrock and Puller

Referred to the Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-252 and 16.1-290 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 63.1-204.2, 63.1-204.3 and 63.1-251.3, as follows:

§ 16.1-252. Preliminary removal order; hearing.

A. A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

B. Prior to the removal hearing, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is twelve years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing and , (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child and (iii) *notice that child support will be considered if a determination is made that the child must be removed from the home.*

C. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf. If the child is twelve years of age or under, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the Department of Social Services, the local Department of Social Services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of § 63.1-248.13:1 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least forty-eight hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

E. In order for a preliminary order to issue or for an existing order to be continued, the petitioning party or agency must prove:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition; and

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably and adequately protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

F. If the court determines that pursuant to subsection E hereof the removal of the child is proper, the court shall:

1. Order that the child be placed in the care and custody of a suitable person, with consideration being given to placement in the care and custody of a nearest kin, including grandparents, or personal

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friend or, if such placement is not available, in the care and custody of a suitable agency; ~~and~~ ;

2. Order that reasonable visitation be allowed between the child and his parents, guardian, legal custodian or other person standing in loco parentis, if such visitation would not endanger the child's life or health; *and*

3. *Order that the parent or other legally obligated person pay child support pursuant to § 16.1-290.*

G. A person having legal custody of a child as defined in § 16.1-228 (i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

§ 16.1-290. Support of committed child; support from estate of child.

A. Whenever legal custody of a child is vested by the court in someone other than his parents, after due notice to the parents or other persons legally obligated to care for and support the child, and after an investigation and hearing, the court shall order and decree that the parent or other legally obligated person shall pay, in such a manner as the court may direct, a reasonable sum commensurate with the ability to pay, that will cover in whole or in part the support and treatment of the child after the decree is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment.

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

C. *Whenever a child is placed in foster care by the court, the court shall order and decree that the parent or other legally obligated person shall pay the Department of Social Services pursuant to §§ 20-108.1, 20-108.2, 63.1-204.2, and 63.1-251.3.*

§ 63.1-204.2. *Child support for child placed in foster care by court.*

Pursuant to § 16.1-290, responsible persons shall pay child support for a child placed in foster care from the date that custody was awarded to the local department of social services . The court order shall state the names of the responsible persons obligated to pay support, and either specify the amount of the support obligation pursuant to § 20-108.2 or indicate that the Division of Child Support Enforcement will establish the amount of the support obligation.

§ 63.1-204.3. *Child support for child placed in foster care where legal custody remains with parent or guardian.*

Responsible persons shall pay child support for a child placed in foster care through an agreement where legal custody remains with the parent or guardian pursuant to subdivision 4 of § 16.1-278.2, from the date that the child was placed in foster care. The agreement between the parents and the local board of social services or public agency shall include provisions for the payment of child support.

§ 63.1-251.3. *Payment of foster care expenditures for child constitutes debt to local department of social services by responsible persons; limitations; local department subrogated to rights.*

Any payment by a local department of social services or public agency designated by a community policy and management team for room, board, and social services for a child in the custody of, or placed with, the local department of social services or public agency designated by the community policy and management team, creates a debt due and owing to the local department of social services or public agency by the persons responsible for support of such child in an amount equal to the amount paid by the local department of social services or designated public agency and shall be assessable by the local department of social services or designated public agency. However, where there has been a court order for support, final decree of divorce ordering support, or administrative order for support, the debt shall be limited to the amount of such order or decree. The Commissioner, pursuant to § 63.1-264, or the court, pursuant to § 16.1-290, shall establish the debt in an amount determined to be consistent with the responsible person's ability to pay. The Department, local department of social services, or designated public agency shall have the right to petition the appropriate court for modification of a court order on the same grounds as either party to such cause.

The Department shall be subrogated to the right of such child to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the Commonwealth to obtain reimbursement of moneys thus expended, and may collect on behalf of any such child any amount contained in any court order of support or any administrative order of support regardless of whether or not the amount of such orders exceeds the total amount paid by the local department of social services or designated public agency. Any support paid in excess of the total amount shall be maintained in an account at the local department of social services or designated public agency on behalf of the child. Any funds remaining in the account at the time that the child leaves foster care shall be paid either to the new legal guardian or to the child if he has been emancipated. If a court order for support or final decree of divorce ordering support enters judgment for an amount of support to be paid by such responsible person, the Department shall be subrogated to the debt created by such order, and the money judgment shall be deemed to be in favor of the Department. In any judicial proceeding brought by an attorney on behalf of the Department pursuant to this section to enforce a support obligation in

122 *which the Department prevails, attorney's fees shall be assessed pursuant to § 63.1-274.10.*

123 *The Department shall have the authority to pursue establishment and enforcement actions against the*
124 *persons responsible for support after the local department of social services or designated public agency*
125 *no longer has custody of the child or responsibility for foster care placement.*

126 *Debts created by an administrative support order under this section shall not be incurred by nor at*
127 *any time collected from a responsible person who is the recipient of public assistance for the benefit of*
128 *minor dependent children for the period such person is in such status. Recipients of federal*
129 *supplemental security income shall not be subject to the establishment of an administrative support*
130 *order while they receive benefits from that source.*